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The Meaning of "Silva" in the Commentary on the *Timaeus* of Plato by Chalcidius

J. REGINALD O'DONNELL C.S.B.

I. *INTRODUCTION*

THE problem of matter has exercised a considerable place in the history of thought. A solution to the questions about its place and rôle in the universe has never ceased to intrigue philosophers. Some have stressed its concreteness; others have proceeded as if it need not be taken into consideration at all. Chalcidius was an easily available source for the Middle Ages. Gilson writes: L'emploi du terme *silva* par un auteur du moyen âge pour designer la matière autorise généralement à conjecturer l'influence de Chalcidius.[1] Consequently, I have thought it worth while to examine the Commentary of Chalcidius on the *Timaeus* to see if there can be found a consistent doctrine with regard to matter, or what he calls *silva*, which might be a source for mediaeval speculation. One notable example is, to mention only one, the identification of possibility and matter.

According to Switalski,[2] Chalcidius was a fourth century Christian living at Rome; however, this cannot be maintained with certitude. The same author likewise intimates that the Commentary is not an original work, but rather the work of some Greek which Chalcidius merely translated.[3] His chief argument seems to be that such an obscure person could hardly have been as familiar with the sources of Greek thought as Chalcidius proves himself to be. This hardly seems to be a proof. However, the Latin style of the Commentary is of a highly Greek flavour, especially in the prolific use of participles, hardly a general characteristic of pure fourth century latin. From the meagre imformation at our disposal, it is impossible to pronounce definitively upon this question. Our Commentator was familiar with the Old Testament, especially *Genesis*,[4] quotes Origen[5] and is likewise aware of the story of the Magi.[6]

The sources of the Commentary are, as Switalski has shown,[7] the Commentary of Posidonius on the *Timaeus*, through the medium of Adrastus and Albinus. Again, Numenius is used by Chalcidius, and is mentioned by name, and with respect, as an exponent of Plato's thought.[8]

Chalcidius' method is historical. He examines the notion of *silva* in the different systems with which he was familiar, giving what he claims to be the counterpart of, or an equivalent for, *silva* from these different systems. This historical survey is perhaps the most interesting feature of the whole Commentary inasmuch as it presents a third or fourth century interpretation of the various schools of Greek thought.

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[1] Et. Gilson, *La Philosophie au Moyen Age* (2nd ed. Paris, 1944) p. 118.

[2] J. Switalski, 'Des Chalcidius Kommentar zu Platos Timäus', *Beiträge zur Geschichte d. Philosophie d. Mittelalters*, Bd. III, Heft 6, Münster, 1902, p. 2. This is the chief secondary source on Chalcidius.

[3] p. 113.

[4] no. 274. In this passage the *Book of Proverbs* is also quoted. The edition used for this article is by G. A. Mullach, *Fragmenta Philosophorum Graecorum* (Paris, 1874), II, pp. 267-351. There is a better edition by J. Wrobel (Leipzig, 1876). The numbering of the paragraphs does not agree in these two editions. In that of Mullach, there are two paragraphs numbered 42; number 140 in Wrobel's edition is divided by Mullach and becomes 141 and 142; hence from no. 42 there is a difference of one and from 142 a difference of two in the numbering. In this article the references are to the edition of Mullach; I have made some changes in the punctuation. The *Translation* of the *Timaeus* by Chalcidius is from pp. 147-181.

[5] no. 127.

[6] no. 274.

[7] pp. 113 ff.

[8] nos. 293 ff.

The Commentary covers roughly the *Timaeus* from 31C to 53C. The term *silva* occurs over 270 times in the Commentary, but not once in the Translation of the *Timaeus* made by the same author. Although generally in exact agreement, the translation of the selections of the Platonic text in Commentary differs considerably at times from the text of the Translation. Perhaps this could be taken as an indication that the Commentary is an authentically original work. Here is but one example: *Ut quam simillimum esset hoc omne perfecto illi, quod mente perspicitur, animali; aevoque exaequatae naturae temporis socia natura nancisceretur imaginem.*[9] *Quo sit plena perfectaque universa res, animalque sensilis mundi proximam similitudinem nanciscatur, perfecto intelligibilique et exemplari ex se genito mundo.*[10]

II. *PLATO'S POSITION*

It seems fitting to reproduce here the main texts from Plato, especially from the *Timaeus*, which have served as a basis for a study of the notion of matter. Since there are many interpretations of Plato, I am also submitting a bibliography which devotes considerable space to the treatment of the problem which concerns us here.

From an analysis of these texts it is hoped that, with the help of Aristotle, we may be able to determine what problems emerge for a Commentator to expound, and from our consideration of Chalcidius we may be able to appraise his merits as a Commentator and to determine whose disciple he is.

In the *Timaeus* Plato describes first the production of the universe from the point of view of the contribution made by the Demiurge and Reason.[11] It is only later that he considers as such the stuff out of which and in which this Demiurge fashioned the world.[12] Of course any notion of a *creatio ex nihilo* was quite foreign to Greek pagan thought.[13] The activity of the Demiurge was exercised on already existing realities, whose nature it is our problem to determine. If we take Plato's own description of it, there is no indication of a creation.[14] The god took the visible mass, which was devoid of rest, ever-changing and orderless, and introduced order into it. What was the nature of this orderless visible mass, and what became of it once order was introduced? Its nature is difficult to determine and to it, like space, we must argue by a counterfeit reasoning.[15]

In the *Philebus*[16] Plato distinguishes a fourfold class of things: the limitless, the limit, a mixture of these two and a cause of the mixture. From these come forth all the beauties of the universe. The limitless, of which Plato here speaks, Aristotle maintains to be the Platonic ὕλη understood, of course, in an Aristotelian sense, which in turn is identified with space inasmuch as it is a receptacle.[17] If we can believe Aristotle, then we have a start in our search for the Platonic notion of matter. It is perhaps worth noting that Plato never used the word ὕλη in the sense of *silva*; where used, it is equivalent to our term *materials*.[18] The use of the word ὕλη in the sense of matter, Chalcidius tells us, was invented by the disciples of Plato and not by Plato himself.[19]

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[9] *Translation* 14, XXIII, p. 167, col. 2.

[10] *Commentary* no. 118; *Timaeus* 39E.

[11] 29D; all references to the *Timaeus* unless otherwise noted.

[12] 48-52.

[13] Cornford, p. 165; cf. p. 6 for bibliography.

[14] 30A ff.

[15] 52B.

[16] 26 ff.

[17] 209 b 11; 192 a 6; Rivaud, p. 292.

[18] 69A; Rivaud, p. 276, note 667.

[19] no. 305, *auditores*.

The disordered motion of the visible mass, with which the Demiurge had to deal, evidently had a cause. Everything that moves must have a cause for that motion. Some clue to the origin of the motion is afforded us in the *Laws*: Every motion of the universe is caused either by the best soul or its opposite.[20] A cause of motion, which is akin to complete unreason, I think, can be inferred to be the opposite of the best soul or an evil soul. This complete unreason can only be persuaded by reason and not coerced, and persuaded only for the most part and not completely.[21] The rôle of reason is limited to persuasion, and does not seem to indicate any order of efficient causality.

From the *Timaeus*[22] there appears to be a fourfold classification parallel to that of the *Philebus* mentioned above. The *world* was fabricated from a mixture of *necessity* and *intelligence*; the cause of the mixture was evidently the *Demiurge*. Necessity and the Errant Cause are the sources of disorder, and if the guardian for a moment slackens his vigilance, the whole universe will revert to a state of disorder, with fate and innate desire taking over.[23]

In this mass or chaos there are certain qualities or virtues with the capacity for reciprocal powers of interaction, the qualities, namely, of fire, earth, air and water.[24] Before the action of the Demiurge, they were so disordered and chaotic that they scarcely merit the name,[25] until under the direction of the god they take on geometrical shapes.[26] These rude and elementary qualities fill the receptacle and agitate it violently in the process of like seeking like in the vast helter skelter mass.[27] This whole process takes place in the receptacle, the nurse of becoming, which is possessed of every diverse appearance,[28] without quality, receptive of all, and very difficult to apprehend.[29] This receptacle Plato later on identifies with space.[30] Cornford avers that it is incorrect to call the receptacle matter, a term which, he says, Plato never used.[31] Nevertheless, in opposition to this we have the opinion of Aristotle cited above.[32] Space Plato describes as eternal, providing a bosom for becoming, for the most part unintelligible, not really subject to sense and partaking of the intelligible in a curious way, and arrived at only by a counterfeit reasoning.[33] This space, according to Aristotle, is the Platonic counterpart of the Aristotelian ὕλη.[34]

A second identification which Aristotle makes for his ὕλη is the Platonic limitless.[35] Can it be identified with space? For Plato there were two extremes of the limitless: *in maximo* and *in minimo*. It is the union of these two extremes, which, according to Aristotle, constitutes ὕλη. In the *Philebus* we find the best description of the limitless.[36] It embraces the greater and the less; all that is in any way determined is possessed of a limit; the limitless is that which is in no way determined. In the *Theaetetus* it is again described as something impossible of qualification as this, οὕτω but rather it is nohow, οὐδ' ὅπως[37] The reconciliation of the coexistence of such contraries is easy in Plato, by means of the categories of the *Sophistes* of same and other, being and non being.[38] It is through the medium of the limitless that the contraries are connected.[39] Can we make any inferences from this brief summary as to the reason for Aristotle's identification of the receptacle, space and the limitless? If we admit that ὕλη is the substratum of all change, itself undetermined, without quality, eternal and constant, then we have at least some of the main characteristics attributed to the receptacle, space and the limitless.[40]

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[20] 896E ff.
[21] 48A.
[22] 47E.
[23] 48A; *Politicus* 272E.
[24] 33A.
[25] 31B.
[26] 69A.
[27] 52B ff.
[28] 52D.
[29] 50E.
[30] 52D.
[31] p. 181.
[32] note 14.
[33] 51B ff.
[34] note 14.
[35] Rivaud, p. 293.
[36] 23D ff.
[37] 183B.
[38] 241D.
[39] Aristotle, 987 b 20; 988 a 26.

If we admit of Anderson's interpretation that Plato wrote as a dramatist,[41] then certainly we must allow for a certain lack of the technicalities of a metaphysical vocabulary.

What becomes of the materials in the receptacle and in space? Are they intelligible? In their first description in the *Timaeus*[42] they hardly deserve the name of elements, στοιχεῖα,[43] but gradually due to the powers and energies, πάθη, δυνάμεις with which they are endowed, they can unite, even though contraries, thanks to the categories of the *Sophistes*, and to the limitless. Gradually triangular shapes are assumed and the whole mass arranged according to mathematical formulae, which fact guarantees a certain degree of intelligibility and a resemblance to the Model.[44] But without this ordering, this working of the Demiurge and reason, the primaeval mass must remain completely unintelligible. Even in the world soul there appears to be an element of unreason.[45]

Among the successors and disciples of Plato, due to a change and confusion of terminology, new and varied interpretations of matter are to be found. Some are attempted clarifications of their master's doctrine; some endeavour to carry it to its logical conclusion; some combine it with the conclusions of non-platonic systems.

To explain the universe Plotinus held that the soul pours itself into every part of the universe in order to enlighten it.[46] Clearly portrayed in his philosophy is the opinion that matter is pure potency, necessarily so, since the material universe is an excellent thing, and so matter cannot contribute to its reality.[47] In opposition to Aristotle he insists that, inasmuch as matter is the principle of evil, there can be no real union of matter and form. Even the lowest vestige of soul does not unite with matter to form the concrete material thing, but is rather superimposed upon it.[48] Corporeal nature is bad because of its intimacy with matter.[49] This ὕλη, by which, Plotinus[50] says, Plato designated the 'αρχαίας Φύσεως of the *Timaeus*,[51] is certainly the origin of evil.

Another of the sources for our Commentator, not however mentioned specifically by name, is Albinus or Alkinoos. Albinus makes no identification of evil and matter, nor does he posit an evil world soul.[52]

From what has been said so far, there emerge the following problems. (1) What is the exact nature of the visible mass? (2) What is the origin of the motion in it? (3) What is the nature of space, the receptacle, place and the limitless, that it was possible for Aristotle to equate them all to ὕλη? (4) What becomes of the mass and space etc. once order has been introduced? (5) What intelligibility does matter possess in itself and in things? (6) Is Chalcidius a Platonist or Aristotelian or both? Let us see if an examination of the texts will yield an answer to these questions.

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[40] Rivaud, p. 355.

[41] F. H. Anderson, *The Argument of Plato* (Toronto, 1934) p. 1.

[42] 52 ff.

[43] *Theaetetus* 201E.

[44] 30 ff.

[45] Cornford, p. 210.

[46] *Enn.* V, 1, 2; cf. A. H. Armstrong, *The Architecture of the Intelligible Universe in the Philosophy of Plotinus* (Cambridge, 1940), p. 84.

[47] Armstrong, p. 87.

[48] *ibid.*, p. 111.

[49] *Enn.* I, 8, 4.

[50] *ibid.*, I, 8, 6.

[51] 90D.

[52] Switalski, p. 97; also R. E. Witt, *Albinus and the History of Middle Platonism* (Cambridge, 1937).

Οὐκοῦν ἐκ τούτων ὧραί τε καὶ ὅσα καλὰ πάντα ἡμῖν γέγονε, τῶν τε ἀπείρων καὶ τῶν πέρας ἐχόντων συμμιχθέντων;
πῶς δ' οὔ; Philebus 26A-B

εἰ δ' ἐστὶ τοῦτο οὕτως ἔχον, ἆρα ἔτι ποθοῦμεν μὴ ἱκανῶς, δεδεῖχθαι Ψυχὴν ταὐτὸν ὂν καὶ τὴν πρώτην γένεσιν καὶ κίνησιν τῶν τε ὄντων καὶ γεγονότων, καὶ ἐσομένων καὶ πάντων αὖ τῶν ἐναντίων τούτοις, ἐπειδή γε ἀνεφάνη μεταβολῆς τε καὶ κινήσεως ἁπάσης αἰτία ἅπασιν;

Οὔκ, ἀλλὰ ἱκανώτατα δέδεικται Ψυχὴ τῶν πάντων πρεσβυτάτη, γενομένη γε ἀρχὴ κινήσεως. Laws 896A.

Βουληθεὶς γὰρ ὁ θεὸς ἀγαθὰ μὲν πάντα, Φλαῦρον δε μηδὲν εἶναι κατὰ δύναμιν, οὕτω δὴ πᾶν ὅσον ἦν ὁρατὸν παραλαβὼν οὐχ ἡσυχίαν ἄγον ἀλλὰ κινούμενον πλημμελῶς καὶ ἀτάκτως, εἰς τάξιν αὐτὸ ἤγαγεν ἐκ τῆς ἀταξίας, ἡγησάμενος ἐκεῖνο τούτου πάντως ἄμεινον. Timaeus 30A.

Τῆς ἀμερίστου καὶ ἀεὶ κατὰ ταὐτὰ ἐχούσης οὐσίας καὶ τῆς αὖ περὶ τὰ σώματα γιγνομένης μεριστῆς τρίτον ἐξ ἀμφοῖν ἐν μέσῳ συνεκεράσατο οὐσίας εἶδος, τῆς τε ταὐτοῦ φύσεως [αὖ πέρι] καὶ τῆς τοῦ ἑτέρου, καὶ κατὰ ταὐτὰ συνέστησεν ἐν μέσῳ τοῦ τε ἀμεροῦς αὐτῶν καὶ τοῦ κατὰ τὰ σώματα μεριστοῦ. Tim. 35A.

Αἱ δ' εἰς ποταμὸν ἐνδεθεῖσαι πολὺν οὔτ' ἐκράτουν οὔτ' ἐκρατοῦντο, βίᾳ δὲ ἐφέροντο καὶ ἔφερον, ὥστε τὸ μὲν ὅλον κινεῖσθαι ζῷον, ἀτάκτως μὴν ὅπῃ τύχοι προϊέναι καὶ ἀλόγος, τὰς ἓξ ἁπάσας κινήσεις ἔχον. Tim. 43A.

Μεμειγμένη γὰρ οὖν ἡ τοῦδε τοῦ κοσμου γένεσις ἐξ ἀνάγκης τε καὶ νοῦ συστάσεως ἐγεννήθη· νοῦ δὲ ἀνάγκης ἄρχοντες τῷ πείθειν αὐτὴν τῶν γιγνομένων τὰ πλεῖστα ἐπὶ τὸ βέλτιστον ἄγειν, τάυτῃ κατὰ ταῦτά τε δι' ἀνάγκης ἡττωμένης ὑπὸ πειθοῦς ἔμφρονος οὕτω κατ' ἀρχὰς συνίστατο τόδε τὸ πᾶν.
Εἴ τις οὖν ᾗ γέγονεν κατὰ ταῦτα ὀντως ἐρεῖ, μεικτέον καὶ τὸ τῆς πλανωμένης εἶδος αἰτίας, ᾗ φέρειν πέφυκεν· Tim. 47E.

Τρίτον δὲ τότε μὲν οὐ διειλόμεθα, νομίσαντες τὰ δύο ἕξειν ἱκανῶς· νῦν δὲ ὁ λόγος ἔοικεν εἰσαναγκάζειν χαλεπὸν καὶ ἀμυδρὸν εἶδος ἐπιχειρεῖν λόγοις ἐμφανίσαι. Τίν' οὖν ἔχον δύναμιν κατὰ φύσιν αὐτὸ ὑπολεπτέον; τοιάνδε μαλίστα· πάσης εἶναι γενέσεως ὑποδοχὴν αὐτὴν οἷον τιθὴνην. Εἴρηται μὲν οὖν τἀληθές δεῖ δὲ ἐναργέστερον εἰπεῖν περὶ αὐτοῦ, χαλεπὸν δὲ ἄλλως τε καὶ διότι προαπορηθῆναι περὶ πυρὸς καὶ τῶν μετὰ πυρὸς ἀναγκαῖον τούτου χάριν. Tim. 49A.

δέχεταί τε γὰρ ἀεὶ τὰ πάντα καὶ μορφὴν οὐδεμίαν ποτὲ οἰδενὶ τῶν εἰσιόντων ὁμοίαν εἴληφεν οὐδαμῇ οὐδαμῶς· Tim. 50B.

'Εν δ' οὖν τῷ παρόντι χρὴ γένη διανοηθῆναι τριττά, τό μὲν γιγνόμενον, τὸ δ' ἐν ᾡ γίγνεται, τὸ δ' ὅθεν ἀφομοιούμενον φύεται τὸ γιγνόμενον. Καὶ δὴ καὶ προσεικάσαι πρέπει τὸ μὲν δεχόμενον μητρί, τὸ δ' ὅθεν πατρί, τὴν δὲ μεταξὺ τούτων φύσιν ἐκγόνῳ, νοῆσαί τε ὡς οὐκ ἄν ἄλλως, ἐκτυπώματος ἔσεσθαι μέλλοντος ἰδεῖν ποικίλου πάσας ποικιλίας, τοῦτ' αὐτὸ ἐν ᾧ ἐκτυπούμενον ἐνίσταται γένοιτ' ἄν παρεσκευασμένον εὖ, πλὴν ἄμορφον ὄν ἐκείνων ἁπασῶν τῶν ἰδεῶν ὅσας μέλλοι δέχεσθαί ποθεν. Tim. 50D.

τρίτον δὲ αὖ γένος ὄν τὸ τῆς χώρας ἀεὶ, φθορὰν οὐ προσδεχόμενον, ἕδραν δὲ παρέχον ὅσα ἔχει γένεσιν πᾶσιν, αὐτὸ δὲ μετ' ἀναισθησίας ἁπτὸν λογισμῷ τινι νόθῳ, μόγις πιστόν, προς ὃ δὴ καὶ ὀνειροπολοῦμεν βλέποντες καὶ φάμεν ἀναγκαῖον εἶναι που τὸ ὄν ἅπαν ἔν τινι τόπῳ καὶ κατέχον χώραν τινά, τὸ δὲ μήτ' ἐν γῇ μήτε που κατ' οὐρανὸν οὐδὲν εἶναι. Tim. 52A.

τὰ δὲ κινούμενα ἄλλα ἄλλοσε ἀεὶ φέρεσθαι διακρινόμενα, ὥσπερ τὰ ὑπὸ τῶν πλοκάνων τε καὶ ὀργάνων τῶν περὶ τὴν τοῦ σίτου κάθαρσιν σειόμενα καὶ

> *ἀναλικνώμενα τὰ μὲν πυκνὰ καὶ βαρέα ἄλλῃ, τὰ δὲ μανὰ καὶ κοῦφα εἰς ἑτέραν ἵζει φερόμενα ἕδραν.* Tim. 52E.
>
> *ὅτε δ' ἐπεχειρεῖτο κοσμεῖσθαι τὸ πᾶν, πῦρ πρῶτον καὶ ὕδωρ καὶ γῆν καὶ ἀέρα, ἴχνη μέν ἔχοντα αὑτῶν ἄττα, παντάπασί γε μὴν διακείμενα, ὥσπερ εἰκὸς ἔχειν ἅπαν ὅταν ἀπῇ τίνος θεός, οὕτω δὴ τότε πεφυκότα ταῦτα πρῶτον διεσχηματίσατο εἴδεσί τε καὶ ἀριθμοῖς.* Tim. 53A-B.

A Bibliography on the Meaning and Application of Matter in Plato

1. C. Baeumker, *Das Problem der Materie in der Griechischen Philosophie* (Münster, 1890), pp. 110 ff.
2. H. F. Cherniss, *Aristotle's Criticism of Plato and the Academy* (Baltimore, 1944).
3. F. M. Cornford, *Plato's Cosmology* (London, 1937).
4. L. Robin, *La Théorie platonicienne des idées et des nombres d'après Aristote* (Paris, 1908).
5. A. Rivaud, *Le Problème du devenir et la notion de la matière dans la philosophie grecque depuis les origines jusqu' à Théophraste* (Paris, 1906).
6. J. B. Skemp, *The Theory of Motion in Plato's Later Dialogues* (Cambridge, 1942).
7. F. Solmsen, *Plato's Theology* (Ithaca, 1942).
8. J. Stenzel, *Plato's Method of Dialectic,* translated and edited with introduction by D. J. Allan, (Oxford, 1940).
9. H. von Arnim, *Stoicorum Veterum Fragmenta* (Leipzig, IV Vols. 1903-24).
10. H. Diels, *Die Fragmente der Vorsokratiker* (Berlin, 4th ed. 1922).

Further Bibliography can be found in the above references; all others will be given in full in the notes.

III. *THE IDENTIFICATIONS OF "SILVA"*

Chalcidius had no doubt that Plato was the greatest of the philosophers; this fact he openly asserts.[53] When the opinions of other philosophers had been portrayed, then contrasted and compared with those of Plato, the preëminence of those of the latter could easily be seen. In what follows I shall attempt to gather together the important texts in which can be seen the uses to which Chalcidius puts the term *silva*, first from the historical survey, and finally from the interpretation of the *Timaeus.*

1. *Chaos*

Platonists, Pythagoreans and Stoics all agree that *silva* is the origin of things.

> Nunc jam de silva tractabitur, quam originem esse rerum consentiunt Pythagorei, Platonici, Stoici. Nomen vero dederunt auditores Platonis. Ipse enim numquam silvae nomen ascripsit, sed aliis multis, ad declarationem naturae ejus convenientibus, nuncupamentis usus est, cum animis nostris intimare vellet intellectum ejus utcumque, vel ex natura propria rei, vel ex passionibus, commotionibusque animorum nostrorum.[54]

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[53] no. 212.

[54] no. 306.

Although Chalcidius, as we have just seen, would find many terms to choose from Plato himself, nevertheless, the most general equivalent which he adopts is from Hesiod;[55]

Ἤτοι μὲν πρώτιστα χάος γενετ', αὐτὰρ ἔπειτα
Γαῖ' εὐρύστερνοσπ, άντων ἕδος ἀσφαλὲς αἰεί,

The translation which Chalcidius gives of the passage from Hesiod is: *Prima haec est caligo, dehinc post terra creata est Spirantum sedes firmissima pectore vasto.* This Chaos has been named by the Greeks *Post Chaos enim, quam Graeci ὕλην, nos silvam vocamus, substitisse terram docet in medietate mundani ambitus, ut fundamenta, fixam et immobilem.*[56] Henceforth, then, *silva* is to be synonymous with ὕλη. Some lexicographers have claimed that *silva and* ὕλη are cognates; this can hardly be maintained.[57] The *Theogony* of Hesiod was a rendering in verse of the popular religious mythology of the origin of the gods and the universe.[58] Consequently Chalcidius can give recognition by this one word *Chaos* to the whole field of non philosophical speculation. From Hesiod's brief statement that the earth came from the void or Chaos we can gather nothing about the manner of the procession; Chalcidius offers no explanation of the myth, but simply states it.

2. *Divisible Substance*

Our first meeting with *silva*, at which there is a definite equation with Platonic terminology, is the statement of the problem which seems to be central to the whole discussion. Did Plato consider indivisible substance, ἀμερίστου οὐσία to be the εἶδος, the exemplar of the visible and sensible world, whereas divisible substance, μεριστοῦ οὐσία was thought to be *silva*, the origin and source of all bodies? *Disceptatum est tamen a veteribus, quae sit quae a Platone dicitur individua, quae item dividua substantia, ex quibus mundi sensilis fabricator Deus tertium substantiae genus, quamve ob causam conflaverit.*[59] Some of the ancients held Plato's teaching to be that indivisible substance was the form of the intelligible world, whereas divisible substance was *silva*: *Propterea que individuam quidem substantiam, mundi intelligibilis speciem, ad cujus similitudinem formatus sit sensilis mundus, Platonem cognominasse dicebant; dividuam porro, silvam.*[60] First of all, however, our Commentator says he will discuss the origin of the world and the generation of the soul, and then finally he will return to a detailed discussion of *silva*. We are warned of the prejudice in favour of Plato which the author is going to have. He will state the opinions of the various other philosophical systems so that the superiority of Plato will be manifest: *Sed quoniam de hoc diversae opiniones Philosophorum tam veterum quam novorum exstiterunt, recensendae nobis singulae sunt, ut, habita comparatione, quanto ceteris ad veritatem praestet Platonis, fiat palam.*[61]

From the elements was produced the universe, each one seeking the place natural to it. These elements contacted each other in such a way that there was a continuous and unbroken series with some overflow, as it were, from one to the other, but underneath there was a common matter or *silva* capable of uniting contraries. This recalls the limitless of Plato: *His porro ad unam veluti seriem continuatis, demum erat necesse fore aliquam ad aliud ex alio elemento transfusionem, cum eorum silva sit utrobique mutabilis, ipsarum autem materiarum vis et natura contraria.*[62] The term *materia* is used throughout the Commentary in the sense of the elements or materials from which a thing is constituted. *Utrobique mutabilis* offers some difficulty of interpretation. Yet, this much seems clear, namely that *silva* is common and interchangeable in its relation to the contiguous elements and serves as the basis or means of union for the different elements that a whole might be constituted.

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[55] *Theogony* 116; this verse was probably taken from Aristotle, 984 b 27.

[56] no. 122.

[57] Cf. A. Ernout and A. Meillet, *Dictionnaire étymologique de la langue latine* (Paris, 1932), s.v. *silva*.

[58] Cf. Rivaud, pp. 5 ff.

[59] nos. 29 ff.; *Timaeus* 35A; see texts p. 5.

[60] *ibid.*

[61] no. 212.

Plato, according to Chalcidius, maintained that in substance there was no matter, and that material things lacked order, beauty and perfection, although endowed with the capability or potentiality of becoming, under the influence of the artisan, an image or likeness of that artisan:

> *Vel cum idem Plato silvam esse dicit in nulla substantia, propterea quod nulla silvestria habeant perfectionem; dum enim sunt adhuc silvestria informia sunt ac sine ordine ac specie, ut saxa; quorum tamen est naturalis possibilitas ut accedente artificio simulacrum fiat.*[63]

Evidently Chalcidius is interpreting Plato as teaching that only the Ideas are worthy of the name of substance, all else which are sensible and mixed with matter are but likenesses or images. Here there seems to be an Aristotelian element in the interpretation of Plato. Matter is in itself completely indescribable in any positive way, but yet is an underlying principle in all sensible things.[64]

3. *Evil Soul*

The ancients are quoted as holding *silva* to be an evil soul; Chalcidius neither agrees nor disagrees with this opinion, but simply relates it. After describing *daemon* as *animal rationabile, immortale, patibile, aethereum, diligentiam hominibus impertiens*, he goes on to say that they are infected by a lust of the earth and communicate in matter, which latter the ancients called an evil soul: *Tanguntur enim ex vicinia terrae terrena libidine, habentque nimiam cum silva communionem, quam malignam animam veteres vocabant.*[65]

4. *The River*

Silva is placed as a fundament in the fabrication of things both animate and inanimate; the entrance of the soul however is always difficult: *Neque enim anima, quae ex sincerissimis excuderetur, in tanta silvae vita posset incidere.* In the production of living bodies, the Children, *οἱ παῖδες*, imitating the Demiurge took fire, earth, air and water and joined them together with invisible bonds, from which mass was fashioned for each individual a body which was first a flowing and fluctuating river, *ποταμὸς*. Into this stream were placed the orderly movements of the soul. This fluctuating and flowing river Chalcidius identifies with *silva corporea*: *Torrentem vocat silvam corpoream, propterea quod defluere non desinat, neque unquam maneat in certa et in stabili constantia nec teneatur.*[66]

In living bodies, the matter is a source of disorder, and in sensation causes rude shocks to the soul: *Quippe sensus, auxiliante silva nimio inordinatoque*

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[62] no. 75.
[63] no. 106.
[64] Cf. Robin, p. 51.
[65] no. 134; for the various opinions of matter as evil cf. Robin, p. 573; Witt, p. 121.
[66] no. 202; *Timaeus* 43A ff.

fluxu totam animam actusque ejus omnes violenta concussione turbare.[67] Plato held, so Chalcidius tells us, that the principal part of the soul is in the head. However, those who taught that matter is the source of divisible substance, placed the soul in no definite or particular part of the body.[68] From this, I think, it safe to infer that Chalcidius did not think Plato intended to make *silva* the source of divisible substance. Empedocles claimed that matter was in some way continuous, and placed the principal part of the soul in the heart.[69] Aristotle defined the soul as the first perfection of a natural and organic body possessing life potentially: *Anima est prima perfectio corporis naturalis organici possibilitate vitam habentis.*[70] Matter was the source of individuation. Man becomes, therefore, an animal and, consequently, a material essence composed of body and soul; the body is the matter *materia*, the soul the form *species*. This form Aristotle called an ἐντελέχεῖα or absolute perfection which, coming to *silvae*, brings individuals to their completion or perfection.

Here we see a distinction being made between *silva* and *materia*; the former is prior to the latter and much more fundamental. From what has been said so far, there seems to be a tendency to interpret *silva* as an ἐξ οὗ rather than an ἐν ᾧ, at least in the fact of application, a fact which leads us to believe there is an Aristotelian element in Chalcidius' interpretation of Plato.

There can be no doubt that Chalcidius prefers the Platonic definition of the soul: *est igitur anima substantia carens corpore, semetipsum movens, rationabilis.*[71] In this definition, any notion of accidentality is taken from the soul. In this connection Gilson writes: L'influence de Chalcidius se joindra à celles de Macrobe, de Nemesius et de beaucoup d'autres pour retarder le moment où la définition aristotélicienne de l'âme apparaîtra comme acceptable pour des esprits chrétiens.[72]

5. *Necessity*

The next equivalent which we find in Plato for the *silva* of Chalcidius is necessity.[73] Here our Commentator is interpreting for us Plato's description of what is brought about by necessity.[74] The universe τόδε τὸ πᾶν is formed by the submission of necessity to the persuasion of reason or wisdom. From this action there comes forth the universe of passive nature. In itself necessity is invariable, and receives its variety from the forms. A mixture is generated then by a passive and resisting necessity combining with an active providence. Matter is a constantly abiding entity in this process and offers itself as a ready, though somewhat recalcitrant, recipient of order:

> Necessitatem porro nunc appellat ὕλην, quam nos latine silvam possumus nominare; ex qua est rerum universitas eademque patibilis natura; quippe subjecta corpori principaliter, in qua qualitates et quantitates et omnia quae accidunt proveniunt. Quae cum a natura propria non recedat, diversis tamen et contrariis speciebus eorum, quae intra se recipit, formisque variatur . . . Mixtam vero generationem dicit esse ideo, quod ex diversis elementis promiscue constet. Non enim ex his mixtus est mundus, sed consultis providae mentis et necessitatis rationibus constitit, operante

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[67] no. 205; *Politicus* 273A ff.

[68] no. 212.

[69] no. 216; Switalski sees an influence of Greek medical writers, especially of Asklepiades.

[70] no. 219; Aristotle 412 a 28.

[71] no. 223; *Phaedrus* 245E.

[72] Gilson, p. 121.

[73] no. 266.

[74] 47E.

> quidem providentia et agente, silva perpetiente exornationique se facilem praebente.[75]

In the text just quoted *providentia* is a translation of νοῦς in Plato, a term used by Anaxagoras for the intelligent principle ruling over brute matter.[76] Throughout this mass there permeates the divine mind, a doctrine which seems to be Stoic in sentiment: *Penetratam siquidem eam usquequaque divina mens format plene, non ut artes formam tribuentes in sola superficie, sed perinde ut natura atque anima, solida corpora permeantes, universa vivificant.*[77] In order that the world be eternal it was necessary that mother *silva*, which by its nature is pliant, be subject to reason and providence, not by a forced surrender but willingly and unresistingly: *Ut igitur mundus aeternus esset, oportuit silvam ei morigeram parentemque subdi, nec adversum exornationem suam resistentem, sed ita victam, ut majestati opificis libens cedat, pareatque ejus sapientiae.*[78] Throughout the passages, where Chalcidius is explaining the part of necessity in the production of the world, the trend of his thought seems clearly Platonic with no Aristotelian influences being apparent. The primaeval mass is there and reason must subdue it, if order is to reign therein. No mention is made of matter being the substratum of things. Are we to understand it in such a strict sense?

6. *The Errant Cause*

Another identification for *silva* is that of the Errant Cause, πλανωμένη αἰτία It is so called because of its disordered motion; it is not the principal cause of things but, nonetheless, necessary to their production.[79] Here again the Errant Cause is construed as an *ex quo*, the first element of all things, of itself formless, without quality, and requires the information of the Idea for the production of things:

> Rursum alio silvam erroris nomine appellat propter inordinatam ejus antiquam jactationem, similiter ut necessitatem, propterea quod non est principalis causa mundi constitutionis in silva, sed necesse fuerit ascisci eam ob substantiam corporalem. Est quippe silva, perinde ut sunt ea, sine quibus, quod institutum est, effici non potest . . . Quippe primum elementum universae rei silva est, et informis et sine qualitate, quam ut sit mundus format intelligibilis species. Ex quibus, silva videlicet et specie, ignis purus et intelligibilis ceteraeque sincerae substantiae quattuor.[80]

Through the action of *species*, which corresponds to the εἶδος, in Platonic language the Idea, in Aristotelian the form,[81] upon *silva* or matter, there are begotten the elements. It seems to me that we have a combination of both Plato and Aristotle in the above texts. From the *Timaeus* there is expressed the insinuation of the previous existence of something to the implanting of the form or Idea; at the same time there is clearly intimated a doctrine of matter and form.

7. *Space and the Receptacle*

The next use of *silva* which we meet is to express space χώρα and the receptacle ὑποδοχὴ in the *Timaeus*.[82] They amounted to the same thing in

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[75] no. 266.

[76] Diels, I, p. 375.

[77] no. 267; Diogenes Laertius VII, 134; cf. C. Piat, *Platon* (Paris, 1906), p. 71, note 1; here are collected texts on the use of *eidos*.

[78] no. 268.

[79] 48A.

[80] no. 269.

[81] Aristotle 194 b 24; 1013 a 24; for Plato Baeumker, p. 354.

[82] 52 ff.

Plato, and Chalcidius considers them as identical inasmuch as he identifies the nurse[83] and the mother of becoming.[84] It likewise can be called place. Disciples of Plato gave it the name of ὕλη, whereas it is called in Latin *silva*:

> Quippe id quod gignitur et perit, nec vere semperque est, corporea species est. Quae quidem corpora sola et per se, ac sine suscipiente ex eadem essentia, essentia esse non possunt. Quam modo matrem, alias nutriculam, interdum totius generationis gremium, nonnumquam locum appellat. Quamque juniores λην, nos silvam vocamus . . . Tunc quippe res omnis in duo fuerat initia divisa. Quorum alterum intelligibis erat species, quam mundi opifex Deus mente concepit, eamque ἰδέαν cognominavit Plato. Alterum imago ejus, quae natura est corporis.[85]

Reason asserts that beneath the diversity of bodies lies the potentiality or receptivity of matter. If we turn our attention to the origins of bodies which are perfect or complete substances, we shall find that all are contained in the bosom of matter. Thus is the beginning of all things, but the exact nature of this beginning is indefinable. We only argue to its existence and any notion of it by excluding all individual things and bodies which have their various forms in the bosom of matter, which latter we conceive as a vast void:

> Porro corpora, si per se ipsa spectentur, perfectam videbuntur substantiam; sed si ad originem eorum convertis mentis intentionem, invenies cuncta, et eorum scatebras, silvae gremio contineri . . . ratio porro asserit subjacere corporum diversitati silvae capacitatem; recte, rationabiliterque censuit hanc ipsam rationem trahendam usque ad intelligentiae lucem. Difficile opus omnino, vel assequi, longe tamen difficilius declarare ac docere. . . . Nihil quippe origine antiquius. Sed obscura quadem luminis presumptione, non ut quid sit explices, sed contra sublatis, quae sunt, singulis, quod solum remanet, ipsum esse, quod quaeritur, intelligendum relinquas; hoc est ut universis corporibus, quae intra gremium silvae varie varia formantur, mutuà ex alio in aliud resolutione singillatim ademtis, solum ipsum vacuum sinum speculatione mentis imagineris.[86]

So much, Chalcidius says, is admitted by most philosophers. It is controverted, however, whether matter is eternal, *infecta*, or produced, *facta*. Likewise, there is disagreement regarding the fact whether it is possessed of quality and form or not, *sine qualitate et imformem*. Among those who attribute quality and form to it, there is still a discussion concerning the character of those qualities or forms. In order that the reader may decide for himself this problem, Chalcidius outlines the history of philosophical speculation on matter.[87] It is not within the scope of the present article to follow through this historical digression; however the various applications of the word *silva* are noteworthy.

8. *The Void and Empty of Genesis*

The first system to which Chalcidius turns his attention is that of the Hebrews. He quotes *Genesis* according to several versions all taken from the

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[83] 49A.

[84] 50D.

[85] no. 271.

[86] no. 272.

[87] no. 273.

Hexapla of Origen.[88] *In principio creavit Deus caelum et terram. Terra autem erat inanis et vacua.* The void and empty earth is taken to mean matter. The beginning, translated by *initio* and *ab exordio*, cannot mean a temporal beginning: *Initium minime temporarium dici.* Chalcidius says he has no intention of going through all the discussions of the meaning of the passage. The matter is the *vetus mundi substantia*, without qualities, formless and receptive of all. We recall the ἀρχαίας Φύσεως of the *Timaeus.*[89] Perhaps we are forced to admit a twofold *silva*, one corporeal, the other intelligible.[90] However, the Greeks limited their attribution of ὕλη to the *terra*:

> Coelum quidem incorpoream naturam; terram vero, quae substantia est corporum, quam Graeci ὕλην vocant. Astipulantur his ea quae sequuntur. Terra autem erat invisibilis et informis, hoc est, silva, vetus mundi substantia, prius quam efficta Dei opificis sollertia sumeret formas, etiam tunc decolor, et omni carens qualitate. Quod vero tale est, invisibile certe habetur, et informe. Inanis porro et nihil propterea dicta, quia, cum sit omnium qualitatum receptrix, propriam nullam habet ex natura. Silva ergo, ut quae cuncta, quae accidunt, recipiat in se, inanis appellata, ut quae compleri numquam posse videatur . . . Quodsi facta est a Deo silva corporea quondam informis, quam Scriptura terram vocat, non est, opinor, desperandum, incorporei quoque generis esse intelligibilem silvam, quae coeli nomine sit nuncupata.[91]

Among those who held that *silva* was uncreated and eternal, some held it to be formless, some possessed of a form. The names quoted are for the most part the Presocratics and seem to follow the order in Aristotle's *Physics* and *Metaphysics.*[92] As there is no end to the different opinions, Chalcidius says he will pass over them. However it is worth noting that those, who placed one of the four elements as the basis of things, are the ones considered to have given qualities and forms to *silva*; for example water in Thales, and fire in Herakleitus are called *silva.*

9. *Aristotelian Matter*

The place of honour is given to Aristotle in the historical analysis of Chalcidius. It is Aristotle who can be the most easily adapted to Platonism and consequently must be given a thorough study: *Cujus sententia cum sit preclara et nobilis et ad Platonici dogmatis considerationem satis accomodata, non otiose praetereunda est.*[93]

Aristotle posited three sources of his eternal world, namely matter, form and privation, none of which could exist by itself:

> Aristoteles quidem tria initia constituit corporeae rei, silvam, speciem, carentiam. Eaque singula sine duum residuorum connexione considerat, licet profiteatur, altera sine alteris esse non posse. Item sine genitura, et sine interitu dicit mundum esse, divina providentia perpetuitati propagatum.

There follows a long quotation from the *Physics*, which, Chalcidius says, needs explanation because it is obscure.[94] Matter is lacking in beauty and so can be called ugly, not indeed of itself, but rather because of its impoverishment. Without form it lacks the adornment, *ornatus*[95] which it requires to fulfill the potentialities of its nature. Without this adornment then, it can be said to be ugliness, *turpitudo*, and incomplete or imperfect.[96] Only the form is said to be real; matter exists accidentally, that is accidental to the reception of the form. The evil that results because of matter cannot really be attributed to matter as such, but rather to privation in matter. Matter can be described as an incorporeal body with the potentiality of becoming a body, but in fact is neither actually nor operationally a body. Plato held for only two principles of things, the form and the limitless, according to Aristotle as interpreted by Chalcidius. Our Commentator evidently accepts Aristotle's identification of matter and the limitless:

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[88] *Genesis* I, 2; Origen, P.G. XV, 144-5.
[89] 90D.
[90] Cf. Plotinus, *Enn.* II, 4, 4-5.
[91] no. 276.
[92] Aristotle 194 b ff.; 983 b ff.
[93] no. 281.
[94] no. 284; Aristotle 192 a 3 ff.

> Superest ergo ut silva cultum ornatumque desideret, quae deformis est, non ex se, sed ad indigentiam; etenim turpitudo est silvam cultu formaque indigere. Sic quippe erit vidua carens specie, perinde ut carens viro femina . . . Ergo juxta Aristotelem proprie quidem et principaliter existens est species. Ex accidenti vero esse dicitur silva, propterea quod natura talis est, ut recipiat formam . . . Consequenter ergo dicemus malitiam esse atque initium malorum non silvam, sed carentiam. Haec est enim imformitas, et nullus cultus, et turpitudo silvae, propthereaque etiam malificentia. Et ideo silvam definit, seu potius appellat, corpus incorporeum ut possibilitate quidem sit corpus, effectu vero et operatione nullum corpus.[97]

10. *Stoic Matter*

The Stoics also considered matter to be eternal.[98] They claimed a twofold origin of things; the eternal god and eternal matter. God was the artisan; matter the stuff within which was exercised the divine activity. Just as the silversmith made silver things from silver, so the divine artisan made material things from matter or *silva*. Matter of itself was without quality but capable of possessing acquired qualities. It is synonymous with essence and is the underlying principle of all bodies. However, within the ranks of the Stoics there were differences of opinion on this latter point, as for example Chrysippus and Zeno, who differentiated, according to Chalcidius, between essence and matter.[99] To this lower principle of material things, no matter how interpreted in its details, Chalcidius gives the name of *silva*. Throughout matter God penetrates *veluti semen per membra genitalia*. Chalcidius considers the Stoic position to be impious, the full deformity of which can be seen once the opinion of Plato has been studied. Part of the Stoic doctrine had been plagiarized from Plato, part is their own invention:

> Stoici quoque ortum silvae rejiciunt; quin potius ipsam et Deum duo totius rei sumunt initia, Deum ut opificem, silvam ut quae operationi subjiciatur . . . Essentia et silva est quod subjacet corpori cuncto . . . Haec Stoici de silva deque initiis rerum partim a Platone usurpantes, partim commenti.

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[95] Cf. *Genesis* II, 1.
[96] no. 286; Aristotle 1075 a 28 ff.
[97] no. 285.
[98] nos. 287 ff.; cf. Baeumker, pp. 326 ff. especially p. 332, note 1.
[99] Von Arnim, II, nos. 317 and 533.

11. *Pythagorean Duality*

For Pythagoras Chalcidius depends upon the authority of Numenius, who, he says, considered Plato and Pythagoras to be of the same opinion regarding matter.[100] For Pythagoras there were two principles of things: god, whom he called *singularity*, τὸ ἕν, and *duality*, or what Chalcidius calls *silva*, ἀόριστος δυάς. By its nature matter was without quality, indeterminate, fluid and the cause of evil. Like the Stoics he held for the formlessness of matter, but, unlike them who considered matter indifferent, Numenius praised Plato for positing two souls, the one beneficent, the other evil, namely matter. The god furnished or embellished matter in a wondrous way and brought it to perfection, not by destroying it, but rather by ordering and adorning it. From matter or necessity the god fashioned this world by persuasion. Thus the vices and deformities of matter were corrected and order brought into confusion:

> Nunc jam Pythagoricum dogma recenseatur. Numenius[101] ex Pythagorae magisterio Stoicorum hoc de initiis dogma refellens Pythagorae dogmate, cui concinere dicit dogma Platonicum, ait Pythagoram Deum quidem singularitatis nomine nominasse; silvam vero duitatis. Quam duitatem indeterminatam quidem, minime genitam; limitatem vero generatam esse dicere . . . Igitur Pythagoras quoque, inquit Numenius, fluidam et sine qualitate silvam esse censet . . . Deum quippe esse . . . initium et causam bonorum, silvam malorum . . . Deus itaque silvam magnifica virtute exornabat vitiaque ejus omnifariam corrigebat, non interficiens, ne natura silvestris funditus interiret . . . Ex qua et Deo mundi machinam constitisse, Deo persuadente, necessitate obsecundante.[102]

12. *Chalcidius' Interpretation of Plato*

Although Chalcidius has already considered many problems concerning the teaching of Plato on matter, it is at this point that he begins in earnest to analize the doctrine of his Master. Various interpretations existed among the disciples and followers of Plato, but Chalcidius tells us that he is going to follow the surer part, one best suited to the mind of so great a philosopher as Plato. Having seen what history had to offer, the preëminence of Plato can now be properly appreciated.

Some Platonists attributed to their Master the opinion that matter was generated, but this was because, in their ignorance, they took his words too literally, not grasping profoundly enough the full meaning of his teaching. Others believed his doctrine to be that matter was ungenerated but endowed with a soul, even in its chaotic state, and possessed of a disordered motion, since immanent motion can exist only in living things. They, therefore, posited the existence of two souls, one beneficent from God, the other evil from matter. All the good that exists comes from the beneficent soul; all evil from the evil soul or matter. Besides, they argued, since Plato said that wisdom persuaded necessity or matter, and since it is impossible to persuade anything without a soul, it was necessary to admit the existence of a soul in the primaeval mass. This opinion was, says Chalcidius, consonant with the teaching of the Hebrews who believed the soul came direct from God, the rest from the earth, of which was the serpent which seduced the firstlings of the human race.

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[100] no. 293; cf. Diels, I, p. 349; Aristotle 987 b 22; Cherniss, pp. 87 and 479 ff.; Baeumker, p. 238, note 2 and p. 394.

[101] Chalcidius' witness of the teaching of Numenius is important; we are dependent chiefly for our knowledge of him on Eusebius' *Praeparatio Evangelica*. Numenius of Apameia (ca. 160 A.D.) is still nearer to the Neo-Pythagoreans and is generally considered to be one. Yet the foundation of his views is formed by Platonism, besides which, with wide-extending syncretism, he appeals to Magians, Egyptians and Brahmins and even to Moses, whom he holds in high repute. Cf. *Eusebi Pamphili Evangelicae Praeparationis Libri* XV, ed. E. H. Gifford (Oxford, 1903), IV, 411b.

[102] no. 293.

There were others however who held that the disordered motion came, not from *silva*, but from the elements, and that all change happened not to matter, but to bodies, which are possessed of qualities:

> Superest ipsa nobis ad tractandum Platonis de silva sententia; quam diverse interpretati videntur auditores Platonis. Quippe alii generatem dici ab eo putaverunt, verbaque clam potius quam rem secuti. Alii vero sine generatione, sed anima praeditam, quando ante illustrationem quoque motu instabili atque inordinato dixerit eam fluctuasse, cum motus intimus genuinusque sit viventium proprius, quodque idem saepe alias duas esse mundi animas dixerit. Unam malignam ex silva; alteram beneficam ex Deo . . . Nec desunt qui putent inordinatum illum et tumultarium motum Platonem non in silva, sed in materiis et corporibus jam notasse; quae initia mundi atque elementa censentur.[103]

In these controverted points Chalcidius takes sides clearly against those who interpret Plato as teaching the creation of matter;[104] however, his position is not so clear regarding the question of the existence of a soul in chaos. Nonetheless the inference is that there was no soul, since *silva* is completely unintelligible and without form or quality. To *silva* can be allotted only a purely passive status.

As regards matter itself there is only one method of argument to establish its existence. Normally we approach a problem in two ways: first, from what is anterior we deduce the consequents; secondly, from what is posterior we argue to the antecedents. This latter method Chalcidius calls a *resolutio. Altera quae ex antiquioribus posteriora confirmat; altera quae posterioribus ad praecedentium indaginem gradatim pervenit.*[105] Here is the method as Chalcidius outlines it. Since there is nothing anterior to matter, *nihil antiquius*, the second alone is valid. We see certain bodies endowed with qualities having their origin in the four elements. If we seek to determine what it is that contains and binds together all these qualities, we arrive at that for which we are looking, namely *silva*. By a process of analysis we come to matter; if, however, we proceed by way of synthesis, we conclude to a cause of the composition, namely God.

Three sources are required for things: God, the Exemplar and matter:

> Quod igitur faciens diximus Deus est; quod vero ut patiens silva corporea. Sed quia id quod facit aliquid ad exemplum aliquod respiciens operatur . . . Et est Deus quidem origo primaria moliens et posita in actu; silva vero ex qua prima fit quod gignitur.[106]

To *silva* is given the name of prime matter, *prima materia*,[107] because it is like some soft and yielding material upon which is impressed the signet of things,

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[103] no. 298; Witt, p. 120; Armstrong, p. 86.

[104] Perhaps Christian Platonists; cf. C. Bigg, *The Christian Platonists of Alexandria* (Oxford, 1886), p. 107; also R. B. Tollinton, *Alexandrine Teaching on the Universe* (London, 1931), pp. 101 ff.

[105] no. 300.

[106] no. 305.

[107] no. 306.

signacula rerum; this however is taken in the sense of πρώτη ὕλη in Aristotle,[108] and not the mediaeval meaning of prime matter. The whole nature of matter is to be convertible into some thing. It is, however, not identical with quality but more fundamental than quality inasmuch as it underlies quality, whereas quality is an accident of *materiae*. For this reason *silva* is said to be purely passive, *patibilis*, παθητική, since it is receptive of all possible qualities.[109] Although change takes place in *silva*, it is not *silva* which undergoes the change, but rather the qualities which are in *silva*. Like wax which is moulded into various shapes, and still keeps its own nature throughout all these changes, so too *silva* remains invariable. The common opinion is that *silva* is without quality, shape or form, *sine qualitate*, *sine figura*, *sine specie*, terms which translate ἄποιον, ἄμορφον, ἀνείδεον and are borrowed from Albinus and Posidonius.[110] It must not be thought, however, that *silva* exists without qualities, form or shape, but that of its own nature it does not possess them; it can be said to accompany them, *comitetur*, or exist along with them or, again, to possess them potentially, *possibilitate*.[111] This potency or capacity admits of a twofold analogy: it can be compared to the seed in which the animal exists;[112] or to wax which receives its form from without:

> Fit porro conversio juxta silvam, non ipsa silva perpetiente mutationem, sed earum, quae sunt in eadem et continentur ab ea qualitatum . . . Etiam hoc communiter ab omnibus pronuntiatur silvam sine qualitate esse ac sine figura et sine specie; non quod sine his unquam esse possit, sed quod haec ex propria natura non habeat, nec possideat potius quam comitetur species et qualitates. Denique si mentis consideratione volumus ei haec adimere, sine quibus non est, possumus ei non effectu, sed possibilitate horum omnium possessionem dare.

The next problem with which Chalcidius concerns himself is to decide whether *silva* is limited, *limitata*, determined, *determinata*, or infinite, *infinita*. Various opinions are available, but our Commentator considers it to be of itself limited, but infinite considered from the point of view of the mind: *Infinita porro, non ut quae immense lateque et insuperabiliter porrecta sunt, sed ut quae possunt aliquo limite circumiri, nec tamen adhuc mentis consideratione vallata.*[113] This seems to mean that since *silva* cannot exist apart from qualities etc., it must be finite and limited; but if considered as imaginable, it is infinite or unlimited in indetermination. If we can imagine it before it has received its adornment, *ante exornationem*, proper to its nature, it is in no way circumscribed by limits, *nondum fine circumdatam*.

Of itself matter is neither fluid nor does it contract: *Neque igitur ut fusilis materia porrigitur, nec contrahitur ut replicabilis.*[114] It can be said to suffer neither increase nor decrease: *Eademque nec incrementum, nec imminutionem pati dicitur.*[115] Although some have thought it to be infinitely divisible, this cannot be so. The reason assigned for his position is that matter is devoid of qualities, and increase etc. depends on these qualities or quantity.

His own opinion then is reiterated. *Silva* is none of the elements but the principal underlying matter, in which there is no qualification of any kind. It is here, one would say, the ὑποκείμενον of Aristotle:

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[108] Cf. 1015 a 7; 1044 b 3; 1069 a 17 ff.

[109] no. 307; Aristotle 324 b 18.

[110] no. 308; cf. Switalski, p. 101; Witt, p. 69; Baeumker, p. 332 note 1.

[111] no. 308; *Timaeus* 49-52.

[112] This appears to be Stoic; cf. Seneca, *Quaest. Nat.* III, 29, 2-3.

[113] nos. 310 ff.

[114] no. 312.

[115] no. 311.

> Recta igitur nostra est opinio, neque ignem, neque terram, neque aquam, neque spiritum esse silvam; sed materiam principalem, et corporis primam subjectionem, in qua non qualitas, non quantitas, non figura, non forma sit ex propria natura, sed virtute opificis haec ei conjuncta et connexa sint, ut ex his universo corpori et singillatim perfectio et communiter varietas comparetur.[116]

That matter is the *prima subjectio* of bodies is easy to demonstrate; since there is change, there must be an underlying principle of this change. *Ex quo perspicuum est quod in illa corporum mutua permutatione invenitur silva antiquissima et principalis subjectio, perinde ut cera mollis, in qua imprimuntur signacula, aut eorum quae generantur commune omnium receptaculum.*[117] There is a definite identification here of the ὑποκείμενον of Aristotle and the ὑποδοχή of Plato.

Matter is neither corporeal nor incorporeal, but potentially both: *Neque corpus neque incorporeum quiddam, posse dici simpliciter puto, sed tam corpus quam incorporeum possibilitate.*[118]

In commenting on the third thing, τρίτον which Plato found it necessary to discover and whose qualities or nature required determination, Chalcidius limits its efficacy to pure receptivity or capacity for adornment: *Vim nunc appellat opportunitatem silvae vultus induendi. Etenim tam vultus, quam qualitates varias necnon quantitates habet, non effectu, sed possibilitate, ob inconstantem eorum mutuam ex alio in aliud conversionem.*[119]

Silva of itself is unalterable but remains as a constant and changeless base of perpetual change. It is unalterable because of itself it is devoid of qualities, which latter are the necessary basis of change:

> Nunc quoniam imformem esse, ac sine qualitate, silvam manifestaverat, immobilem quoque curat ostendere, asserens moveri eam conformarique, ab introeuntibus multimodis, cum ipsa ita ut formae, sic motus quoque sit expers, sed a speciebus formam habentibus vel motum, varie diverseque formari. Manet ergo haec in tali fortuna et conditione semper . . . Sed archetyporum quoque exemplorum simulacra, quae silvae obveniunt, non permanent; namque assidue, ac sine intermissione, mutantur, mortis nascendique perpetua successione, ob inexcusabilem naturae cujusdam necessitatem.[120]

13. *The Mother and Nurse of Becoming*

Silva is made an equivalent to the mother and nurse of becoming as described in the *Timaeus*. That in which generation takes place is the mother; the Ideas or forms coming to matter are likened to the father; a comparison which Aristotle will use. The things begotten are midway between the father and mother, having some resemblance to both; because of its resemblance to the father, these material things can in some way said to be. Just how these forms come to matter is beyond our power to grasp, since matter eludes our comprehension.[121]

There are two forms which come to matter: the first in the production of *materia silvestris*, the second of a greater dignity; for example by the first form, wood is produced, by the second, a ship. We cannot say that *silva* is *silvestris*; nor can we say that *silva* lacks *silva*. *Silva* is *principalis subjectio*, and beyond that we cannot go. Through the second form that is, the form which is present at the birth or production of something, *ex nativa specie*, *silva* becomes a substance:

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[116] no. 314; Aristotle 192 a 31; 983 a 29.

[117] no. 316.

[118] no. 317; Aristotle 1036 a 8.

[119] no. 318; *Timaeus* 48A.

[120] no. 327; Aristotle 225 a 25.

[121] no. 333; *Timaeus* 50D-E; Aristotle 738 b 20; 740 b 24.

> Comparat enim, quod percepit in se species, matri videlicet silvae. Haec enim recipit a natura proditas species. Illud vero, ex quo similitudo commeat, patri, hoc est Ideae . . . Ergo quod inter has duas naturas positum est, vere existens non est.[122] Cum enim sit imago vere existentis rei, videtur esse aliquatenus . . . Rerum gemina species consideratur, illa qua exornata silva est, nihiloque minus alia species consideratur, ad cujus similitudinem illa species facta est, quae silvae tributa est; et est imposita quidem silvae species secunda . . . sic silvam quoque neque silvestrem putamus, nec silva carere.[123]

As *silva* is the *principalis subjectio*, the exemplar becomes the *principalis species*; hence we cannot, in respect to the first form, affirm that *silva* is endowed with qualities or without them, possessed of a form or formless. Every composite has qualities and form; yet when we take into consideration the final form, of say a piece of bronze destined to become a statue, the *silva* can hardly be said to be formed until it becomes the statue:

> Rursum silva non dicebatur formata, sed nec informis. Formatum enim quidque compositum sit necesse est ex participante, et ex participabili, ut statua . . . Propterea igitur, silva negatur esse formata, nec vero minime est formata. Nam propter hanc quoque omnia alia, quae sunt formata impressione vultus, sunt.[124]

14. *The Winnowing Basket*

The winnowing basket Chalcidius qualifies as *Euripus* and this is, in turn, called *silva*. The term *Euripus* or εὔριπος seems to indicate a return to the notion of the fluctuating river rather than the idea of a δεξαμενή.[125] *Silva*, before its formation, *ante exornationem*, is neither stable nor in motion, but possessed of the capacity to both stability and movement. When bodies have been placed into the vast bosom of the receptacle, it takes on their motion and the whole mass is shaken violently by the disordered motion of like seeking like and in search of a resting place. The vast shaking receptacle seems to be interpreted as a place *in which*, and not a thing *out of which*, generation happens. The receptacle shaking from the motion of the elements in it resembles a machine used for separating chaff from grain and thus gets its name of the winnowing basket.

15. *The Vestige of the Elements*

The orderless and irrational movement of the elements in the receptacle, before their formation into geometrical figures, kept a trace of their proper form. A vestige of an element can hardly be called an element; neither does it deserve the name of body; hence it is best called *silva*: *Ergo silva etiam*

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[122] no. 328; Aristotle 729 a 10.

[123] no. 336.

[124] no. 337.

[125] no. 351; *Timaeus* 52E.

vestigium corporis fuit ante mundi exornationem.[126] Thus *silva*, although only a vestigium, ἴχνη, possesses a capacity to receive beauty and order when God so disposes to adorn it.

16. *The Intelligibility of Matter*

It will not surprise us that Chalcidius maintains the unintelligibility of matter. He is satisfied to quote the opinion of Plato, which is reëchoed in Aristotle: ἡ δ' ὕλη ἄγνωστος καθ' αὑτήν[127]. We cannot know matter either through the senses or by reason, but, as it were, in a dream. Since it is unknowable, it is with difficulty that we can speak of it. It cannot be called a this or a that, a *hoc vel illud*, just as we do not speak of fire, but of something on fire. *Silva* has as its sole function to be an underlying principle, *nihil his praebet praeter subjectionem*, to which the Ideas come; just how the Ideas come to matter must remain a mystery. *Inexplicabile et difficile est mente concipere.*[128] Of itself it is a place wherein the Intelligibles are received, itself remaining unintelligible. It is sensed only incidentally; we think it is subject to sensation but in reality that is not the case: *ipsam sine tangentis sensu tangi . . . sic igitur etiam silva contigua quidem est, quia contingi putatur . . . Minime igitur cum sensu ejus fit imaginatio; sine sensu igitur.*[129] It is consequently neither an *intelligibile quid* nor an *opinabile quid*, but is only *suspicabilis*, that is subject to conjecture.[130] We conjecture its existence because we are accustomed to consider things as being *in some place*. It is this point, which Chalcidius says, Plato labours in the *Parmenides*, namely that matter eludes the grasp of sense, reason and the intelligence: *Etenim est difficilis consideratio propter silvae naturales tenebras, quippe quae subterfugiat non modo sensus omnes, sed etiam rationis investigationem, intellectus indaginem.*[131]

17. *Conclusion*

It is clear from what has been seen that no clearcut and consistent doctrine of matter emerges from a study of the Commentary of Chalcidius on the *Timaeus*. Only very general points can be stated with certainty. However, if one is disappointed doctrinally, there is a compensation in the fact that we see a sort of combination of Aristotle and Plato, wherein there is an attempt to interpret Plato with an Aristotelian vocabulary, but a definite advantage being given to Plato. When in the Middle Ages we come in contact with an immaterialist Physics, we need not be surprised; Chalcidius had already established the starting point. Consequently when mediaeval thinkers felt themselves forced to this position, they could go to Chalcidius.

At times we see Chalcidius interpreting Platonic matter as pure space, a mere *in quo*; again, as definitely an *ex quo*. If we are to take the words of Chalcidius literally, then there can be no doubt that Plato was the Philosopher, Aristotle just another great man.

At the beginning of this article a few questions were asked; unfortunately, they have not been answered. The nature of the visible mass remains still a mystery; likewise the nature of space and the receptacle. We infer that there was no soul in the primaeval mass and our Commentator states quite clearly that this primaeval mass is eternal. As to what becomes of matter once the Demiurge has introduced order, is just as vague as before having read

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[126] no. 352; *Timaeus* 53B.

[127] 984 b 27.

[128] no. 327.

[129] no. 343.

[130] no. 345.

[131] no. 333; cf. *Parmenides* 130A ff.

Chalcidius. Matter is, as we have seen, unintelligible, completely so, and thus we are in difficulties once we come to talk about it.

Since matter is devoid of intelligibility, then knowledge cannot be sought in things which are concrete; we must look to the Forms or Ideas which come to matter to order it, but never to make it intelligible.

As a term, *silva* is made to cover such a variety of doctrines that it is scarcely definable. Its most general usage seems to be something out of which something is made. However, even here, reservations must be made since it can apply to the Platonic receptacle and space.

St. Albert, Patron of Cashel

A Study in the History of Diocesan Episcopacy in Ireland

JOHN HENNIG

WHEN, towards the middle of the eighteenth century, the first liturgical calendar for all Ireland was granted and the first official collection of *Officia Propria* for Ireland made,[1] it was found that—for reasons which go back to the early Celtic Church[2]—none of the feasts of Irish Saints, except the three patrons, had attained really nation-wide significance, and that not even for the feasts of the three patrons suitable *propria* could be produced from Irish sources. The first liturgical calendar, approved in 1741 and 1747, included, apart from Saints Brigid, Columba, Malachy and Laurence O'Toole,[3] only Saints whose cult had originated on the Continent, and the first official edition of *Officia Propria Hiberniae*, published in 1768 at Prague and in 1769 at Paris, contained only offices taken from liturgical text-books of the Continent.

It was not until 1781 that *Officia propria Hiberniae* were published in Dublin. Nine years before, at the request of Dr. Carpenter,[4] the liturgical calendar proper to Ireland had been enlarged by the insertion of the feasts of twenty-three diocesan patrons of Ireland. According to the order of the liturgical year, the first of these feasts was that of St. Albert, assigned to the eighth of January; this Saint might also have been regarded as holding a special rank among Ireland's diocesan patrons, as the *Officia Propria* described him as patron of the archdiocese of Cashel, except for Armagh the oldest metropolitan see of Ireland. For none of the feasts of diocesan patrons granted in 1772 were any proper texts prescribed, for the simple reason that such were not in existence. The decrees conceding the first liturgical calendar had expressly stated that unless proper texts were extant in "approved liturgical text-books", the Masses and Offices for the various feasts of Irish Saints were to be taken from the Common. It was not until 1903 that Dr. Healy obtained the official sanction of historical lessons, to this day the only texts proper to the feasts of the diocesan patrons of Ireland. While the historical lessons, collected from continental sources, in the eighteenth century *Officia Propria Hiberniae* were summaries of the legendary tradition of the late Middle Ages, these modern lessons are summaries of the historical tradition of Irish Saints, as it presented itself at the beginning of the twentieth century.

The historical lessons prescribed in 1903 for the feast of St. Albert make it quite clear that this Saint holds a unique position among the diocesan patrons of Ireland. Of the Saints[5] whose cult originated on the Continent and whose names were inserted in the liturgical calendar of Ireland, none was a diocesan patron in Ireland. On the other hand, none of the diocesan patrons whose feasts were prescribed in 1772 was ever venerated on the Continent or even set foot on the Continent. The only exception to both rules is St. Albert. The first of the three historical lessons prescribed for the second Nocturn of his feast reads:

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[1] J. B. O'Connell, 'Reformed Offices of Irish Saints', *Irish Ecclesiastical Record* Series V, VIII (1916), pp. 299 ff.

[2] Cf. my article, 'A Feast of All the Saints in Ireland', soon to appear in *Speculum*.

[3] St. Brigid is the patroness of Kildare and Leighlin; St. Columba of Derry and Raphoe; St. Malachy of Armagh (archdioc.), Down and Connor and St. Laurence of Dublin (archdioc.). For the patronages of Saints Malachy and Laurence, cf. *infra*, p. 34.

[4] O'Connell, *art. cit.*, pp. 309 ff. Cf. *infra*, note 74.

[5] E.g. Columbanus (Cf. my article in *Irish Ecclesiastical Record* Series V, LXII (1943), pp. 307 ff.), Rumold and Livinus (cf. *infra*, p. 35-37).

> Insigni in ecclesia Ratisbonensi colitur memoria fratrum sanctorum, Alberti et Erhardi, qui causa peregrinandi pro Christo, episcopatus honorem in patria dimiserunt. Albertus enim episcopus Cassiliensis, Erhardus vero Ardaghensis apud Hibernos fuisse dicitur, cum more patriae peregrinari statuerunt. Comes ipsis additus est Hildulphus, qui brevi postea Trevirorum archiepiscopus, uti fertur, creatus est.

The name of the city of Ratisbon occurs in three more instances in the historical lessons for the feast of St. Albert. The last instance is the reference to the devotion paid to the tomb of Saints Erhard and Albert *in ecclesia Ratisbonensi usque ad hodierum diem.* No attempt is made in these lessons to trace a genuinely Irish tradition of St. Albert. His Irish associations are clearly described as mere tradition. In fact, these lessons confined themselves to restating the tradition of St. Albert in its final stage as elaborated by the sixteenth century Bavarian historians.

We have no trace of this tradition's being known in Ireland before the middle of the seventeenth century. In 1624 Ware was still unaware of St. Albert.[5b] In 1665,[5c] however, he restated what twenty years earlier Colgan[5d] had told of the Bavarian tradition of Saints Albert and Erhard. Colgan dealt with both Saints under the eighth of January, the date of St. Erhard's feast on the Continent. He was unable to produce any evidence for a cult of St. Albert independent of that of St. Erhard, nor had he succeeded in procuring the *Vita* of St. Albert which, he understood, had been preserved in Bavaria.

In the late nineteenth century, the Rev. John O'Hanlon[6] extensively discussed Colgan's account of the tradition of Saints Erhard and Albert, without, however, adding anything new to it, except the undocumented statement that "St. Albert has been so long venerated as patron of a most important and celebrated ancient Irish diocese". It is the purpose of this paper to show that the tradition of St. Albert is an interesting illustration of the fact that, while not being one of the ancient dioceses of Ireland, Cashel attained early recognition of its metropolitan rank not only in Ireland but also on the Continent, and that, on the other hand, St. Albert's patronage in the archdiocese of Cashel cannot be traced before the late eighteenth century. Thus, we shall see, the tradition of St. Albert illustrates the lasting significance for Irish Church history of the great reform of the Celtic Church which culminated in the Synod of Cashel (1172).

At the same time as Colgan, Stephen White in his *Apologia pro Hibernia*[7] also referred to Saints Albert and Erhard. White lived in Bavaria and was actually Colgan's chief correspondent in that part of Europe. At Ratisbon, he described the Life of St. Erhard by Conradus a Monte Puellania for Usher. In the few lines which White devotes to St. Albert, the most remarkable point is that he calls Albert *episcopus* rather than *archiepiscopus.* Accepting the statement of Giraldus that the archdiocese of Cashel was erected in 1152, and the Bavarian tradition that St. Albert had lived in the seventh century, White and Colgan assumed that the words *archiepiscopus Casselensis*, applied in the Bavarian tradition to St. Albert,[8] should be interpreted as meaning either *archiepiscopus*

[5b] *Archiepiscoporum Casselensium et Tuamensium Vitae* (Dublin), pp. 1 ff.

[5c] *De Praesulibus Hiberniae* (Dublin), pp. 84 ff., 160.

[5d] *Acta Sanctorum . . . Hiberniae* (Louvain), I, pp. 32 ff.

[6] *Lives of the Irish Saints* (Dublin, 1873), I, pp. 102 ff.

[7] Ed. Kelly, (Dublin, 1849) IV, p. 43; V, p. 64. Cf. Reeves in *Proceedings of the Royal Irish Academy* (*RIA*) VIII (1864), p. 31.

[8] In *De Praesulibus Hiberniae*, ed. Doherty (Dublin, 1944), II, p. 3, John Lynch (1672) says that according to *exteri scriptores*, Albert was archbishop of Cashel: on Erhard, bishop of Ardagh, *ibid.*, I, p. 258.

Momoniae or simply *episcopus Casselensis* (bishop in Cashel rather than of Cashel) or even *episcopus Imelacensis* (bishop of Emly, the diocese to which Cashel belonged up to the early twelfth century).[9] As we have seen, the historical lessons for St. Albert's feast followed this reasoning.

The clearest recognition of the traditional interweaving of the tradition of St. Albert with that of St. Erhard is found in the fact that when, after being declared patron of Cashel, St. Albert was given a feast, this feast was assigned to the eighth of January, since the tenth century the date of the feast of St. Erhard in Germany[10] and to this day his solemnity as principal patron of Ratisbon.[11] As the historical lessons in the *Proprium* for Ireland rightly state, a visible sign of St. Albert's close association with St. Erhard is their epitaph in the Niedermünster at Ratisbon. This association is not found in the earliest sources on St. Erhard, especially his *Vita* written by Paul at the suggestion of an abbess of the Niedermünster at Ratisbon in the second half of the eleventh century; in Paul's *Vita* no mention is made of St. Albert. The sources from which Colgan drew his information on St. Albert were the works of the great Bavarian historians of the sixteenth and seventeenth centuries, such as Wigileus Hund[12] and the Jesuits Andreas Bruner[13] and Matthaeus Rader,[14] and the Breviary of Ratisbon. Colgan's suggestion that there must exist an old *Vita* of St. Albert was based on the fact that, in contrast with the earliest tradition of St. Erhard, these works associated St. Erhard with St. Albert.

Of Erhard's descent, Paul's *Vita*[15] says that he was *Narbonnensis gentilitate, Nervius civilitate et genere Scoticus*[16] (*Scotticus or Schotticus*). Discussing these words, Dr. Kenney says: "There are later lives of St. Erhard, but they have no independent value". For the study of the development of the tradition of Saints Erhard and Albert, however, those later lives are of great interest. One of them says that Erhard was *genere Gothicus, civitate Narbonnensis*, and this is apparently the source for Dr. Kenney's suggestion that even in Paul's *Vita* "we should perhaps read 'Gothicus' instead of 'Scoticus'." "Gothicus", however, is more likely to be either a mis-spelling or an attempt to establish a certain harmony between the three determinations given by Paul for Erhard's descent. So far as it does not associate St. Erhard with Albert, the later tradition, such as represented mainly by Augsburg sources, states that Erhard was *Narbonna in Scotia natus* (so the Life of St. Erhard by Udalric of Augsburg) and in the *Legenda Germanica*[16b] or *natione Scotus* (Breviary for Augsburg, also the Breviary for Würzburg, all quoted by Colgan). The Breviary for Ratisbon is the oldest source quoted by Colgan[16c] for St. Albert's association with Saints Erhard and Hildulph and the definite association of these saints with Hibernia:

> Erhardus in vetere Scotia, seu Hibernia Insula Oceani,[17] natus est . . .

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[9] O'Hanlon, *op. cit.*, p. 107.

[10] Levison, MHG, *Scriptores rerum Merovingiarum* VI (1913), p. 2, note 8.

[11] In *Les Saints irlandais hors d'Irlande* (Louvain, 1936), Dom Gougaud said nothing of Saints Erhard and Albert. Cf., however, my article, 'Irish Saints in the Liturgical and Artistic Tradition of Central Europe', *Irish Eccl. Record* Series V, LXI (1924), pp. 184 ff.

[12] *Allgemeine Deutsche Biographie XIII* (1881), p. 393 and O'Hanlon, *op. cit.*, p. 110, note 42.

[13] *Allgemeine Deutsche Biographie* III (1876), p. 446.

[14] *Ibid.*, XXVII (1888), p. 118 and O'Hanlon, *op. cit.*, p. 107, note 18.

[15] James F. Kenney, *The Sources for the Early History of Ireland* I (New York, 1929), no., 322, i. p. 527

[16] These words were taken over literally into the 'old Augsburg Breviary' quoted by Colgan, *loc. cit.*, and by the Bollandists, *Acta Sanctorum*, Jan. I (1863), pp. 433 ff. The later Augsburg tradition shortened this paragraph, cf. *infra*, p. 23. For the general significance of the words *genere Scoticus*, cf. p. 31, especially note 55.

[16b] Augsburg, 1478.

[16c] For sources other than those hitherto known to Irish writers on St. Albert, cf. note 76.

[17] Compare *Scotia, quae et Hybernia dicitur, insula est maris Oceani* in *Passio sti. Kiliani* (Kenney, *op. cit.*, no. 317, p. 512; *Acta Sanctorum*, Jul. II, p. 615).

> Fratres habuit Sanctum Albertum Pontificem Casselensis ecclesiae in eadem Insula et Hildulphum . . .

We shall see that the association of St. Erhard with St. Albert and their definite association with Ireland is really proper to the Ratisbon tradition. As long as only Colgan's sources were known, it should have appeared strange that there is no trace of a liturgical veneration of St. Albert in Ratisbon, and that in the records on the elevation of St. Erhard's relics in 1052,[18] there is no mention of the relics of St. Albert, although tradition insists on their having been buried in the same tomb. While St. Erhard's chapel near the Niedermünster Church, Ratisbon, dates *aus nicht näher bestimmter früh-romanischer Zeit*, the epitaph of Saints Erhard and Albert in the Niedermünster Church is not older than the fourteenth century.[19]

From the outset the association of St. Erhard with St. Albert and their definite association with Ireland is combined with the assertion that both Saints were bishops in Ireland. The Ratisbon Breviary describes Albert as *Pontifex Casselensis Ecclesiae* and Erhard as *Ardachensis Ecclesiae episcopus*. According to Andreas Bruner, tradition makes *illum* (Erhard) *Episcopum Ardahadensis, hunc Casselensis ecclesiae.*[19b] (Bruner is in the first instance concerned with St. Erhard; the insertion of the word *archiepiscopus* after *hunc* would not only have destroyed the strict parallelism, but also would have placed Albert above the patron-Saint of Ratisbon; moreover, Bruner like all the other later writers was not in a position to realise the historical significance of the tradition of St. Albert's archiepiscopate in Cashel). The older writers definitely say that Albert was archbishop. Rader[19c] says that Erhard was *Ardakadensis*[19d] (so also Hund) *Episcopus* and Albert *Assalensis* (Colgan erroneously *Assadensis*) *Archiepiscopus*;[19e] after the word *Assadensis* Colgan inserts *rectius Casselensis*,[20] as Hund the earliest of these writers has it. Rader's mistake is a significant indication of the ignorance of those Bavarian writers of Irish history and geography. Hund added that Albert was *Anglicus natione*; Colgan prefaces this quotation by the words *mendose irrepsit*. We shall see that this reference to Albert's English descent shows rather that Hund was the only one of the later writers on St. Albert who had some knowledge of the original *Vita* of that Saint,[20b] and that the words *archiepiscopus Casselensis* and, in fact, the whole association of Albert with Erhard and their definite association with Ireland could have been dismissed likewise, as there is not a trace of all these things in the early tradition of St. Erhard.

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[18] This event probably induced Paul to write his *Vita*. Cf. Levison, *op. cit.*, p. 3.

[19] Dehio, *Handbuch der deutschen Kunstdenkmäler* II (Berlin, 1934), pp. 443 ff.

[19b] Also the *Anonymi Ratisponensis Farrago Historica Rerum Ratispon.* (1529) (cf. *infra*, note 76) refers to both Erhard and Albert merely as bishops: Erhardus episcopus Ardinacensis et Albertus episcopus Castelensis, (Ousorsius: *Castilensis*).

[19c] *Bavaria Sancta* (1615), I, fol. 69.

[19d] The spelling *Ardakadensis* appears first in Hochward's *Episcoporum Ratisbon. Catalogus* (1542). Cf. *infra*, note 76.

[19e] The value of Ebrard's *Iroschottische Missionskirche* (Gütersloh, 1873), which German Protestant writers still regard as a standard work, is sufficiently characterised by the following statements: Bei Hund (!) wird Hildulf (!) als episcopus Ardahadensis bezeichnet; wo in Flandern (!) dies Culdeerkloster (!) gelegen hat, wird schwer zu ermitteln sein. Nur an Ardêche in Languedoc darf man nicht denken, eher an Ath bei Tournay (p. 327 ff.); Die Nachrichten von einem aus dem Hennegau stammenden Culdeer Erhard, der um 660 oder 670 culdeeischer Abtbischof in Regensburg gewesen, erscheinen durchaus als glaubwürdig (p. 345). Ebrard does not mention St. Albert. Cotton's *Fasti Ecclesiae Hiberniae* (1845 ff.) omits (I, p. 85) a reference to Albert although a summary of the Ardagh tradition of Erhard is given in III, p. 179. We shall see (*infra.*, p. 33) that the whole association of Erhard with Ireland is much less historical than that of Albert. Even Catholic authors, such as Patrick Lynch (in his list of archbishops of Cashel, *The Life of Saint Patrick* (Dublin, 1810), p. 324,) passed in silence over St. Albert patron of Cashel.

[20] Colgan, p. 39.

[20b] Cf. *infra*, note 31.

Colgan, and those who drew on him, discussed the tradition of Saints Erhard and Albert under the following questions: 1° How did these two Saints become associated? 2° From what country did they come? 3° When did they live? and 4° Of which sees in Ireland were they bishops? There are more questions regarding the life of these two Saints on the Continent, such as their association with St. Hildulph and other companions; their journey to Rome and the Holy Land; and the end of their lives at Ratisbon, but these questions have nothing to do with St. Albert's patronage in Cashel. The major part of what Colgan, Ware, Lanigan and O'Hanlon have said about St. Albert, has become obsolete through the rediscovery of the original life of St. Albert. Yet had Colgan known that *Vita*, the later tradition of St. Albert would have hardly obtained that consideration which it rightly obtained, nor, as we shall see, is it likely that St. Albert would have become patron of Cashel.

The *Vita sti. Albarti*[21] was written just a hundred years after Paul's *Vita sti. Erardi* by a monk of the Irish community of St. James at Ratisbon which was then at the height of its development. The first publication of this *Vita*, in 1721 by Pez at Augsburg, remained unknown in Ireland. A scholarly edition of the *Vita sti. Albarti* was made by Wilhelm Levison,[22] mainly from two thirteenth century manuscripts, one from St. Emeran Ratisbon (one of the most important store-houses of Irish book production on the Continent), the other from Vienna where the Ratisbon congregation of Irish Benedictines had two houses. There exists a still earlier manuscript in Heiligkreuz, while later manuscripts have been traced at Zwettl and Melk, all monastic establishments which participated in the literary tradition of mediaeval Irish monasticism in Central Europe.[23]

In some manuscripts this *Vita* is given the title *De sancto Albarto archiepiscopo*. The beginning reads as follows:

> Sanctus Albartus natione Anglus (St. Emeran *Ms*, as Hund: Anglicus,)[23b] conversatione angelus,[24] civis Lunnensis (so the Vienna *Ms*, where a later hand corrected to: Lunensis, St. Emeran *Ms* has: Lundonensis)[25] vitam angelicam inter homines duxit et in medio nationis prave et perverse[26] quasi stella matutina clarior sideribus aliis oculis intuentium delectabiliter in se convertit. Et quasi odor balsami Christi odor fuit,[27] adeo ut non solum sue gentis homines, sed et vicinarum regionum nationes odore noticie sue et luce fidei sue delectarentur. Inter quos beatus Herhardus, in Hybernia natus et conversatus,[27a] sanctitate magnificus, dignitate episcopus in civitate que dicitur Artinacha (Pez: Attinache) audiens de sanctissimi viri celesti

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[21] Kenney, *op. cit.*, no. 332, ii, p. 527.

[22] So far as I am aware, no writer in Ireland has so far written on the *Vita sti. Albarti*. Popular studies, such as John Gleeson, *Cashel of the Kings* (Dublin, 1927), pp. 174 ff. and M. Maher, *The Archbishops of Cashel* (Dublin, 1927), p. 1, ignored it.

[23] Malachias episcopus Lesmurensis in Hybernia sacros ordines in Zwetel celebravit (Cod. Zwetlensis of *Annales Claustroburgenses* ad A.D. 1207; MGH, SS IX, p. 607; cf. also *infra*, note 68c). The *Continuatio Sancrucensis Secunda* has ad A.D. 1260 a note on the death of Oriel *rex Hybernie* (*ibid.*, p. 664). The Vienna Codex of the *Annals of Melk* (*ibid.*, p. 483) contains also a copy of the *Annales Scotorum* A.D. 1178 to 1224 (*ibid.*, p. 624).

[23b] Cf. note 76. *Ms.* M of the *Vita sti. Maedoci* 17, is older than *Ms.* V because it has the much later form Anglicus (instead of *gens Anglicana*. (Plummer, *Vitae Sanctorum Hiberniae* (Oxford, 1910) I, p. lxxv, note 4). The expression *nacione Anglicus* occurs in the thirteenth century *Vita sti. Fechini*, 18 (*ibid.*, II, p. 80).

[24] Cf. *infra*, note 67.

[25] Compare *Annales sti. Rudperti Salisb.* (the only German Saint whose name, since 1782, is found in the *Proprium* for Ireland, as the see of Salzburg, founded by him, was a centre of Irish missionary activity) ad A.D. 1264: Rex Francie uno cum rege Scotorum . . . civitatem Lundunensem obsedit. (MGH, SS IX, p. 797. So also, *Annales Sancrucenses*, ibid, p. 646).

[26] Cf. *infra*, p. 33.

[27] Cf. *infra*, p. 30.

[27a] Cf. *infra*, note 45.

> conversatione et desiderio ipsum desiderans visitare et alloqui exemplisque ejus et doctrinis informari, Dei virum adiit; quem ipse tanquam angelum Dei suscipiens de adventu tanti viri gaudio magno repletus est, pariterque commanentes et in lege Domini die ac nocte meditantes, alter alterius mutua conversatione relevatus est.[27b]
>
> Communicato autem consilio per spiritum consilii, sanctus Albartus beatum Herhardum de Anglia in Hyberniam[28] secutus, venit in celebrem locum qui dicitur Caselle (Vienna *Ms* Casselle), que est civitas metropolis, urbs Hybernie regalis,[29] qua post biennum proprio fuit orbata pastore. Incole autem civitatis sanctum Albartum prius quidem per famam cognoscentes, tunc a facie videntes, unanimo voto sibi metropolitanum exceperunt.[29b] Ipse vero Albartus factus (est) archiepiscopus.[29c]

A third Irish place-name mentioned in this *Vita* is Lismore.[30] On the occasion of some *precipua festivitate,* the bishops and princes and the tribes of that district came together at Lesmor. In the course of the *sollempnitatis officia*, one of the bishops present preached a sermon on the evangelical precepts and this sermon decided Albartus *cum beato Herhardo collega et coepiscopo suo*[31] to lay down their episcopal dignity and to go abroad.

Regarding this *Vita*, Levison said:

> Satis fabulosa videtur. Utrum narratio tota a monacho Scottico ficta sit an de Confessione Sancti Bavarici et episcopi cuiusdam Hibernici agatur, rerum Hibernicarum peritis diiudicandum relinquo (l. c., p. 4).

Arnpek[31b] (A.D. 1495), whose sources, as we shall see, are very good, informs us that up to the time when *Erharus episcopus Ardinachensis et Albertus Caselensis archiepiscopus* were buried there (or rather until their grave was rediscovered there), the Lower Monastery of Ratisbon was *pusillum et exiguum tam in capacitate quam in redditibus suis.*

> Sed predictorum Sanctorum gratia populus ibidem concurrere coepit, ut

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[27b] May we establish a parallelism between the last two sentences and the following passage from the *Vita sti. Tigernaci* (Plummer, *op. cit.*, II, p. 266, according to Kenney, *op. cit.*, no. 179, p. 387, 'late'): Fama autem sanctitatis eius atque virtutum circum quaque diffusa religiosi viri ad sanctitatis eius exempla imitanda convenerunt. Quorum unus fuit vir venerabilis Doachus, egregius Patriciane sedis archiepiscopus, quem ille pio affectu hilarique vultu suscepit, et corporali ac spirituali refectione pro viribus pavit; atque pro eo crastina die in viam pergente devotas orationes ad Dominum fudit.

[28] Compare *ex Anglia in Germaniam* in Lectio iv of the Office for the Feast of St. Walburga in *Officia Propria Sanctorum Angliae, Acta Sanctorum*, Febr. III, pp. 519, 561.

[29] Compare the twelfth century *Sequentia de sancto Carolo Imperatore* proper to the city of Aachen: Urbs Aquensis, urbs regalis. Like Cashel, Aachen based its claim for a bishopric on its reputation as *urbs regalis*, a claim which was not fulfilled until the nineteenth century. Recent German deprecation of Charlemagne may be paralleled with Irish unwillingness to accept the English element in the history of Ireland. (Cf. *infra*, pp. 33, 37).

[29b] Cf. note 68d.

[29c] Vienna *Ms.* adds *episcopus*, later deleted. Later the *Vita* speaks of Albert's *episcopale onus* but again calls him *archiepiscopus.*

[30] Cf. note 23. Pez, *Thesaurus Anecdotum* (Augsburg, 1721), II, iii, reads in the St. Emeran Codex *Attinacha* and *Lesinor.*

[31] The expression *coepiscopus* is in the second *Vita* of St. Erhard applied to St. Hildulph (*Acta Sanctorum*, Jul. III, p. 221). That Hund (*Metropolis Salisburgensis* (Munich, 1620), I, p. 186) speaks of *Albertus cum collega suo S. Erhardo, relictis post se omnibus* is a further proof of his knowledge of the *Vita sti. Albarti.*

[31b] Cf. note 76.

> suis elemosynis eandem domum Domini locupletare et augere satagabant. Tunc temporis fuerunt in eodem loco monachi Ordinis Sti. Augustini.

This account, which no other writer of Ratisbon history has, clearly shows that the inmates of the Lower Monastery rather than the *Scoti* of St. James's Ratisbon were responsible for the various fabulous additions to the tradition of St. Erhard, namely:

1° his definite association with the Island of Saints,
2° his promotion to the episcopal dignity,
3° his association with the "bishopric" of Artinacha and with St. Albert, "archbishop of Cashel", and
4° his and Albert's promotion to the episcopate in Ratisbon (a point with which I shall not concern myself in this paper).

In the later Middle Ages the tradition of St. Erhard had become again strong enough to dispense with the association with St. Albert. With an eye to this later tradition, Colgan and, dependent on him, Ware had already pointed out that the whole tradition of Saints Erhard and Albert is involved in obscurity. Harris's[32] only contribution towards the elucidation of this matter was that he attributed this obscurity to "the ignorance of Monkish biographers in the dark ages".

The discussion of the historical background of the *Vita sti. Albarti* would naturally have to start with the three place-names mentioned in it. While the identity of *Cas(s)elle* and *Lesmor* is beyond doubt, that of *Artinacha* is not quite clear. Accepting the sixteenth century tradition that Erhard was *episcopus Ardahadensis*, Levison adds a note to the word *Artinacha* saying: *Hodie Ardagh in provincia Leinster com. Longford.* However, there is not the slightest evidence that *Artinacha* ever meant Ardagh.[32b] The word *Artinacha* occurs only in one other document, to which Ware already directed the attention of students of the episcopal history of Cashel when, writing on the *Archiepiscoporum Casselensium Vitae*[32c] of the twelfth century, he noted: *De hac re vide Vincent. spec. hist. (in visione Tundali) lib. 27, cap. 88.* It was, however, not until the beginning of the extensive research work carried out by Archdeacon Seymour[33] that the *Visio Tundali* was appreciated as "a welcome and unexpected" source on the "development of diocesan episcopacy in Ireland between the Synods of Rathbrassail and Kells".

In the course of the great reform aiming at complete external assimilation of the Irish to the continental and English Church, the Synod of Rathbrassail (A.D. 1110) established, or rather gave provisional shape to the establishment previously started of the system of diocesan episcopacy, that is, the strictly canonical episcopacy, withdrawn from secular interference, bound to the Holy See, with fixed sees organised under metropolitans.[33b] In strict imitation of the organisation of the English Church,[33c] this Synod provided for Ireland two metropolitan sees, Cashel in addition to the ancient metropolitan See of Armagh, each with twelve suffragan bishoprics. This system met with many difficulties which eventually led to the intervention of a foreign Papal Legate, who, at the Synod of Kells (A.D. 1152), set up two more metropolitan sees in Ireland, namely Tuam and Dublin.[34]

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[32] In his edition of Ware's Works (Dublin, 1739), I, pp. 248, 464.

[32b] Cf. notes 48 and 51.

[32c] Cf. *supra*, note 5b.

[33] (a) *Pre-Reformation Archbishops of Cashel* (Dublin, 1910), p. 10; (b) 'Studies in the Vision of Tundal', *RIA* XXXVII (1926), p. 87-106; (c) *Irish Visions of the Other World* (London, 1930), pp. 124-167. Also his pamphlet, *The Twelfth Century Reformation in Ireland* (Dublin, 1932). For the general literature on the Reform in Ireland, cf. Kenney, *op. cit.*, Chapter VIII, and the *Literaturverzeichnis* in John Francis O'Doherty, *Laurentius von Dublin und das irische Normannentum* (Diss. München, 1933).

[33b] Cf. note 62.

[33c] Beda, *Hist. Eccles.* I, 29, says that this organisation was proposed by Pope St. Gregory (cf. note 67). Cf., however, Lawlor's introduction to his translation of *St. Bernard's Life of St. Malachy* (New York, 1920), pp. xxxix ff.

One of the reasons leading to the Synod of Kells was the increase, between the years 1110 and 1148, of the suffragan bishoprics from 24 to 34, a development of which the *Visio Tundali*[35] tells us. The *Visio Tundali* is the account of a vision of the other World which Tundalus, a knight from Cashel, had in 1148 at Cork. It exists in a Latin translation which Marcus, also a native of Cashel, made a few months later shortly after his arrival at Ratisbon (where he apparently joined the community of St. James), at the request of the abbess and two nuns of the (German) convent of St. Paul in that city. For the convenience of his foreign readers, Marcus prefaced his work by a short account of the geography of Ireland, concluding with the following passage:

> Hec ergo insula civitates habet precipua triginta quattuor, quarum presules duobus subsunt metropolitanis. Artimacha namque septentrionalium Hybernensium est metropolis, australium autem precelentissima est Caselensis.

This is the text as Wagner[36] and Seymour[36b] give it. Wagner's notes, however, show that the Erlangen *Ms.* of the *Visio Tundali* has *Artinacha*, and the Trier *Ms. Artinaca.*[37] Right from the first German translations,[38] no writer of the *Visio Tundali* has ever expressed any doubt that Marcus refers in this instance to Armagh. The Hassian version, written shortly after the original *Visio Tundali* says that *Iberne* has thirty-four *howbetstede.*[39] One of them is called *Archamacha*. Omitting the reference to Cashel, this version makes Tundalus a native of Cork (*Crocagensis*). Towards the end of the twelfth century. Alber, a monk of the Benedictine monastery at Windsberg near Ratisbon,[40] rendered the *Visio Tundali* into the Bavarian dialect. "Hybernia", he says "is a great country, as I found in the book. It has many big towns (*grozer stete vil*), thirty-four of them, each a *bistum . . . der stet eine vil gewis / heizzet cafelensis.*[40b] According to Alber, *cafelensis* was not only Tundal's birth-place but also the scene of his vision. Translating *metropolis* by *howbetstat* or *groze stat*, the German translators showed that they did not understand the significance of the reference to Armagh and Cashel in the *Visio Tundali*. We know neither where the Hassian translator got the form *Archamacha* from (this is the first work of continental vernacular literature to refer to this place), nor how he established the identity of *Artimacha*. Alber's spelling

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[34] O'Doherty, *op. cit.*, pp. 14 ff.

[35] Cf. note 13 and Kenney, *op. cit.*, no. 619, pp. 741 ff.

[36] Albr. Wagner, *Visio Tungdali, lateinisch und altdeutsch* (Erlangen, 1882).

[36b] *Irish Visions of the Other World*, p. 148 with translation.

[37] Wagner, *op. cit.*, p. 6, note to line 13. One of the manuscripts of the *Visio Tundali* was in Göttweich (*ibid.* p. XI) where one of the companions of Muiredach Macc Robartaig, the founder of the Irish Monastery of St. James at Ratisbon, was an incluse. Cf. Kenney, *op. cit.*, p. 617.

[38] Cf. Gustav Ehrismann, *Geschichte der deutschen Literatur bis zum Ausgang des Mittelalters* II (München, 1922), §52.

[39] Wagner, *op. cit.*, p. 115. According to Gottfried von Strassburg (v. 7398), at his first journey to Ireland, Tristan sailed *gein der houbetstat ze Develîne*. Gottfried's *Tristan* and the *Vita sti. Rumoldi* (cf. *infra*, p. 36) are the first works of continental literature which mention the name of Dublin.

[40] The architecture of the first new Monastery of St. James at Ratisbon, consecrated in 1120, was strongly influenced by that of the (German) Benedictine Abbey of Prüfening as was also that of the Abbeys of Windsberg and of Biburg (where one of the manuscripts of the *Vita Tertia* of St. Patrick was preserved. Cf. Kenney, *op. cit.*, no. 134). All these monasteries were united by their adherence to the Hirsau reform (Dehio, *op. cit.*, pp. 70, 438, 548 and A. Gwynn S. J. 'Irish Monks and the Cluniac Reform', *Studies* XXIX (1940), pp. 428 ff.).

[40b] Wagner, *op. cit.*, p. 126.

cafelensis should be ascribed to a mistake in reading (especially if it is assumed that his *Vorlage*, perhaps Marcus's original manuscript, was written in Irish script), but even so, this spelling shows that the name of the then still new metropolitan see in Ireland was unknown to the German writer.[41]

The German versions not only shortened Marcus's account of Ireland (as apparently not pertinent to the subject-matter of the *Visio*), but also omitted the introductory paragraph[42] in which Marcus gave the date of Tundal's vision in relation to events of continental and Irish church history. In this passage Marcus refers to St. Bernard's *Life of St. Malachy* as just being written.[43] Though the assumption that the word *metropolis* is used in the *Vita sti. Malachiae* for the first time in reference to Irish church organisation, is not correct, its use in the *Visio Tundali* was doubtless derived from St. Bernard's work.[44] In the use of this word and in many other respects also the *Vita sti. Albarti* seems to be dependent on the *Life of St. Malachy*.

> St. Bernard tells us that Malachy was *alitus in civitate Armacha* (ii, 1), that he received his training under *Malchus natione Hibernicus, sed in Anglia conversatus,*[45] *episcopus in Lesmor*[46] *civitate Mumoniae quae est Hiberniae pars australis* (iv, 8f) and that he became bishop of Connor (vii, 16) and afterwards *metropolitanus totius Hiberniae*[46b] *et Ardmacha* (xii). On his first journey to Rome[47] *petit confirmari novae metropolis constitutionem et utriusque sedis pallia sibi dari* (xvi).

Ardmacha is the most common form given in mediaeval Irish literature to the name of Armagh. The list of bishoprics established by the Council of Kells has *Armachia*.[48] On the other hand, in the early Patrician documents we find also *Arttmacha* and the Latinised form *Alti-Macha*.[49] The form *Artimacha* seems to be a combination of these two latter forms and the form *Artinacha*, a misspelling which, as we suggest, the writer of the *Vita sti. Albarti* gathered from the *Visio Tundali Ms.* E(rlangen) or better, the manuscript from which this manuscript and *Ms.* T(rier) are copies. While I do not intend to enter into a discussion of the literary relations between the *Visio Tundali* and the *Vita sti. Albarti*, I should like to point to just one striking parallel between these two texts. To the words *quasi odor balsami Christi bonus odor fuit* in the beginning of the *Vita sti. Albarti*, Levison rightly notes that this is a quotation from II *Cor.* 2, 15. The *Visio Tundali*[49b] has actually: *Valet dicere cum apostolo: bonus odor sumus deo.* However, even without any further proofs of literary dependency, the references made to *Caselle* and *Artinacha* allow us to establish the relationship between these two works. If the literary tradition attached to the Irish congregation under the leadership of Ratisbon had been better known, this relationship could have been almost postulated from the fact that these two works originated at practically the same time at Ratisbon and, as will be shown, were both written by natives of Cashel.

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[41] The later Low German versions, ed. R. Verdeyen and J. Eindepols in *Tondalus' visioen en St. Patricius' vagevuur*, II (Groningen, 1914), apparently followed the same source as Alber. None of them mentioned the name of Cork. The various spellings for the name of Cashel given in them (*Casalens, Casalus, Cassilenus, Casalensis*) are less interesting than those for *Artimacha*. The Cologne *Ms.* has *Arthijmaka*, the Brussels *Ms. Arthinaka*, the Hague *Ms. Arthimacha*, the Nymwegen *Ms.*, *Archmake* and the writer of the Ghent *Ms.* apparently pokes fun at the queer Irish place names (cf. note 63b), speaking of *Archimomska*. At any rate, as late as the fourteenth century, the ambiguity between *Artimacha* and *Artinacha* had not yet been cleared up.

[42] Of the Low German versions only one has it. As Malory's version of the Tristan tradition omitted all reference to Irish places (cf. notes 39 and 69), so the fourteenth century English versions of the Tundalus story (Edinburgh, 1843) and the modern French translation (Mons, 1837) omitted Marcus' geographical introduction.

[43] Seymour, *Visions of the Other World*, pp. 143 ff. Cf. Kenney, no. 652, pp. 764 ff.

[44] *Ibid.*, pp. 149 ff. and Lawlor, *RIA* XXXV (1919), p. 233. Two of the ancient biographers of St. Brigid, namely Cogitosus (Kenney, *op. cit.*, no. 147, p. 359) and the writer of Colgan's third Life (Kenney, *op. cit.*, no. 151, IV, iii, p. 362) speak of Kildare as *metropolis Laginensium* (Colgan, *Acta*, p. 218). This seems to be the only instance in which the word *metropolis* is used in reference to the tribal system of Irish Church organisation. In the *Vita sti. Wironis* (cf. *infra*, note 63b) we read of *metropolis totius Hiberniae*.

[45] Should we compare: *Herhardus, in Hybernia . . . conversatus* in *Vita sti. Albarti* (cf. *supra*, p. 25).

[46] Cf. note 23.

[46b] The Archbishop of Armagh is 'Primate of all Ireland', the Archbishop of Dublin 'Primate of Ireland'.

[47] In 1139; cf. Kenney, *op. cit.*, p. 767.

[48] Lawlor, *RIA* XXXVI (1922), pp. 16 ff. In the same list we have *cassellennensis* and *arcdahad*. 'This list', Lawlor adds, 'is full of errors in place names'. Cf. also Kenney, *op. cit.*, no. 653, pp. 768 ff.

[49] Apostolica urbs quae Scotice nominatur Ardd Macha (additions to Tirechan, Stokes edition of *Vita Tripartita* (1887); cf. also Kenney, *op. cit.*, no. 135, p. 344, p. 336 and Index.

The connection between *Artinacha* and Cashel, and the tradition of St. Albert's archiepiscopate in Cashel, should be studied in the light, and as a further illustration, of the historical development of diocesan episcopacy in Ireland as referred to in the introduction to the *Visio Tundali.* I suggest that the change made in the later tradition from *archiepiscopus* to *episcopus Casselensis* originates from the same misunderstanding as the mis-interpretation of *Artinacha* as Ardagh. Rejecting Colgan's suggestion that *Narbonna* mentioned in the tradition of St. Erhard was Ardboe in Co. Tyrone, Lanigan[50] tried to infer that *Narbonna* was a corruption for the name of Ardagh. Ardagh is one of the seven Patrician dioceses of Ireland and, like many of the other ancient dioceses, was given in 1772 as patron the titular of its Cathedral (St. Mel, reputed to be a nephew of St. Patrick.)[51] There was accordingly no need of adopting St. Erhard as patron for this diocese, and therefore in the Irish Church the eighth of January is now only the feast of St. Albert.

The first who saw the possibility of *Artinacha* (in the *Vita sti. Albarti*) standing for Armagh was Dr. Kenney[51b] when noting: *Artinacha* (*Artmacha, Ard-Macha*?). Still more convincing a proof of the connection between the *Visio Tundali* and the *Vita sti. Albarti* than the reading *Artinacha* is the fact that the authors of both works are natives of Cashel. Seymour has drawn our attention to the significance of Marcus descent,[52] especially with regard to the various references made in the *Visio Tundali* to the political and ecclesiastical history of Munster during the first half of the twelfth century. That the author of the *Vita sti. Albarti* was a native of Cashel may be inferred from his description of that town as *celeber locus, civitas metropolis, urbs Hybernie regalis.* Cashel, the ancient residence of the kings of Munster, was granted to the Church at the beginning of the twelfth century, probably with the express design that it should become an archbishopric.[52b] Of Armagh the writer of the *Vita sti. Albarti* has nothing to say but that it was *civitas que dicitur Artinacha.* Similarly, in the *Visio Tundali* (in the passage quoted above p. 28) the word *precelentissima* as applied to Cashel is not merely a synonym for *metropolis* but aims at emphasising the splendour of the new metropolitan see. In both works the writing *Artinacha* may possibly be regarded as a deliberate misspelling to obscure the tradition of Armagh. The biographer of St. Albert obviously counts on the ignorance of his continental readers when he describes Armagh merely as a bishopric.[52c]

[49b] Wagner, *op. cit.*, p. 4, line 10.

[50] *Ecclesiastical History of Ireland* (1826), III, p. 108.

[51] *Mél Ardachaid, Vita Tripartita*, ed. Stokes, p. 13. Cf. also note 48. On Ardagh's representation at the Synod of Kells, cf. Colgan, *op. cit.*, pp. 654 ff.

[51b] *Op. cit.*, no. 332, ii, p. 527.

[52] Diese begeisterte Schilderung Irlands muss von einem Iren stammen; ein Deutscher hätte das anders gemacht. Wagner, *op. cit.*, p. xxiii. Cf. Seymour, *RIA* XXXVII, pp. 87 ff.

[52b] Kenney, *op. cit.*, p. 765, n.

[52c] It should be noted that Blessed Christian, the great Cistercian, bishop of Lismore

Munstermen played a prominent part in the Ratisbon congregation. In 1148, Christian MacCarthy, a Munsterman as his surname shows, the eighth abbot of St. James's Ratisbon, died on his second visit to Ireland.[53] The Ratisbon congregation owned for some time a house in Co. Cork.

Marcus cleverly linked his geographical introduction to the account of Tundal's vision by the reference to Cashel as the new metropolitan see and as the birthplace of Tundal. The fact that both himself and Tundal were natives of the metropolitan see of Southern Ireland gave more weight to his work, and as the German nuns regarded the account of Tundal's vision worth translating, he naturally used the opportunity to spread the knowledge of the newly attained glory of his and Tundal's birthplace. Ignorant as they were of contemporary Irish Church history, the early[54] German translators of the *Visio Tundali* did not appreciate the co-ordination between Armagh and Cashel. The Hassian version omitted the reference to Cashel, and Alber's version that to Armagh.

Similarly the parallelism established between Armagh and Cashel in the *Vita sti. Albarti* was lost in the later tradition of Saints Albert and Erhard. The association with Scotia, found from the eleventh century onwards in the tradition of St. Erhard, is only one of the numerous expressions of the predilection for Irish Saints, characteristic of continental hagiography of that time. The Bollandists[54b] regarded this predilection as due to scrupulous nationalism among the *Scoti* on the Continent. Even if one adopts the rationalist idea of eleventh and twelfth century hagiographers' deliberately establishing national associations for patriotic reasons, the tradition of Saints Erhard and Albert would show that such Irish forgeries were provoked by continental demand for associations with the Island of Saints.[55] While the early tradition had assigned St. Erhard to the late seventh century, the later tradition associates him with the reign of Pippin and Charlemagne. This was done first by the *Ratisbon Schottenlegende* which, as Dürrwächter[56] has shown, is a thirteenth century compilation made by Ratisbon citizens to the greater glory of their Schottenkloster.[57] That the *Schottenlegende* was not written by Irishmen may also be seen from the elimination of the Artinacha-Cashel associations in the tradition of Saints Erhard and Albert. What the Ratisbon writer of the *Schottenlegende* was interested in was the establishment of an early Irish tradition at Ratisbon and of its interlinking with Charlemagne. He dealt with St. Erhard in a paragraph *De recessu Herhardi et sociorum eius,*[58] and in a later paragraph on Irish Saints in the Carolingian Empire in general.[59] The *Schottenlegende* is probably the earliest work to associate St. Erhard with both St. Albert and St. Hildulph (the latter association is outside the scope of this paper):

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towards the end of the second half of the twelfth century, is also called in some continental martyrologies *episcopus Ardmachanus*, Colgan, *Acta*, p. 653.

[53] Seymour, *op. cit.*, p. 89. Cf. also Kenney, *op. cit.*, p. 617.

[54] Cf. note 41.

[54b] March viii (1865), 288 E, F.

[55] Compare the *Vita sti. Altonis*, written about 1060 by Othlon a monk of St. Emeran, Ratisbon (Kenney, *op. cit.*, no. 320, p. 514) and the *Life of St. Wendelin* (Kenney, *ibid.* no. 315, p. 511; *Acta Sanctorum*, Oct. 21, p. 348 E: Exortus regione Scotorum = Hibernia, *ibid.* p. 344). As Gougaud, *op. cit.*, Appendix I, has shown, the tradition of St. Disibod (Kenney, *op. cit.*, no. 318, p. 513) is the earliest source for Ireland's reputation as Island of Saints; St. Hildegard's Life of this Saint was written in 1170. In 1171.

[56] *Die Gesta Caroli Magni der Regensburger Schottenlegende* (Bonn, 1897), p. 2.

[57] An early illustration of the great regard in which the citizens of Ratisbon held their *Scoti* is the establishment at Kiev of an Irish community to minister to the Ratisbon merchants. Cf. Gougaud, *Christianity in Celtic Lands* (1932), p. 182. Cf. also the corrections and additions in my article 'Irish Monastic Activities in Eastern Europe', *Irish Ecclesiastical Record*, Series V, LXIV (1945).

[58] fol. 35b, Dürrwächter, *op. cit.*, p. 8.

[59] *Ibid.*, pp. 29, 172.

> Eodem tempore, viri quidam religiosi Scoti de Hibernia et episcopi Hildolphus et Herhardus, frater eius, et Albertus episcopus, viri magnae virtutis, ad limina apostolorum visitanda, indulgenciam a domno apostolico receperunt (to preach the Gospel in Germany).

After Hildulphus's death, *frater eius Herhardus et Albertus, sancti pontifices* went to Ratisbon. I only mention that the *Vita sti. Albarti* also says that Albert and Erhard *venerunt . . . visitare limina apostolica.*

An interesting extract from the *Schottenlegende* is found in *Tractatus de limitibus parochiarum civitatis Ratisponensis* by Conrad von Megenberg:[60]

> Legitur enim in cronicis quod tempore pape Leonis II qui A.D. 797 cepit presidere . . . sanctus Hyldulphus, frater beati Erhardi in archiepiscopum Treverensem consecratus est. Quo defuncto beatus Erhardus cum socio Alberto venit in Ratisponam.

Dürrwächter stated that while the *Schottenlegende* occupied an influential place in fourteenth and fifteenth century Bavarian historiography, *die Forscher des 16. und 17. Jahrhunderts streiften sie mit einem verächtlichen Blick.* With regard to St. Albert, the later Bavarian historians (who, except for Hund, were apparently unaware of the original *Vita sti. Alberti*) accepted the interpretation given to his tradition by the *Schottenlegende*, especially with regard to the chronology. The *Vita sti. Albarti* assigned Saints Erhard and Albert to the reign of Pope Formosus, that is, the end of the ninth century, a date which is probably just as phantastic as the chronology of the first and second *Vita* of St. Erhard. With the latter the Bollandists are particularly angry, as it said that St. Erhard lived at the time of Charlemagne and of Pope Leo IX. I may suggest that the anonymous writer of that *Vita* had in mind Leo II (as the *Schottenlegende* had it), but wrote "Leo IX", the Pope who was said to have pronounced St. Erhard's canonisation. The chronology of the *Vita sti. Erhardi* by Conrad de Montepuella, in the fourteenth century a member of the Irish community at Vienna, shows some agreement with that of the *Vita sti. Albarti.*[61] So far as St. Albert is concerned, the discussions of the chronology given by his tradition become superfluous when we regard the *Vita sti. Albarti* as an illustration of the metropolitan system set up by St. Malachy and, as such, closely related with the introduction to the *Visio Tundali.* While the *Visio Tundali* and St. Bernard's *Life of St. Malachy* are the first works of continental literature to mention the name of the city of Cork, the *Vita sti. Albarti* and St. Bernard's *Life of St. Malachy* are the first works of continental literature to mention the name of Lismore. The bishop at Lismore through whose sermon, according to the *Vita sti. Albarti*, Saints Albert and Erhard were induced to lay down their dignity, may be Malchus, bishop of Lismore,[61a] according to St. Bernard, the holy teacher of St. Malachy. His preaching must have been of special appeal to Albert, the Englishman, as he was trained at Winchester and had been consecrated by St. Anselm of Canterbury.

What the Irish writer of the *Vita sti. Albarti* found at Ratisbon was, on the one hand, the early information given a few years before by Marcus on the metropolitan rank attained by Cashel in the first half of the twelfth century, and on the other hand, the Bavarian tradition of St. Erhard's association with

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[60] *Ibid.*, p. 220. On Conrad, cf. Ehrismann, *op. cit.*, *Schlussband*, pp. 645 ff.

[61] *Acta Sanctorum*, Jan. I, p. 540. O'Hanlon, *op. cit.*, I, p. 109, notes.

[61a] P. Power, *Waterford and Lismore* (1937), pp. 6 ff: Up to his time the Bishop of Lismore had not quite lost his monastic character.

Scotia. Drawing on these two sources, he established a more ancient tradition of the metropolitan character of Cashel so as to emphasise the priority of his native city against Tuam and Dublin,[61b] the newcomers in the metropolitan system of Ireland. He did so even at the expense of Armagh. At the same time he was sure to please the Ratisbon citizens whose interest in the metropolitan see of Cashel was naturally evoked by the establishment of an ancient direct association with their city, an association which was cleverly coupled with a (disguised) association of St. Erhard, the city patron, with the metropolitan see of Ireland.

Far from being a "mendacious insertion", the emphasis laid by the writer of the *Vita* on Albert's English descent is most significant and indeed historically appropriate. (His description of the English as *natio prava et perversa*—a quotation from *Phil.* 2, 15—has obviously not a nationalist meaning, but like the still more derogatory account given of the Irish by St. Bernard in the beginning of his *Life*, and doubtless on the authority of St. Malachy, is a cliché of reform literature). An Irishman writing with the express purpose of establishing a historical association with his home-country is unlikely to make his hero an Englishman unless he has a good reason to do so. The imitation stipulated at Rathbrassail of the episcopal system of England was a result of the admonitions which Lanfranc and Anselm had addressed to the Irish Church to conform with continental usages. Already during the eleventh century the Danish towns in Ireland (Dublin, Waterford, Limerick and Wexford) which recognised the supremacy of Canterbury, had obtained their bishops from England, if not actually by birth, at least by training.[62] What then was more natural than to make the archbishop of Cashel actually an Englishman, who by his great holiness became acceptable to the Irish? Thus emphasising Cashel's links with England, the writer of the *Vita sti. Albarti* may even have appealed to England to uphold Cashel's claim to be the only metropolitan see in Ireland, apart from Armagh, against the provisions made at Kells, as we know, to the displeasure of the English king.

We do not know whether the writer of the *Vita sti. Albarti* had a historical personage in mind when he said that Albert filled the see of Cashel after a vacancy of two years. He definitely does not make St. Albert the first archbishop of Cashel. Whether the Bavarian tradition and the Irish associations of St. Erhard have any historical background is doubtful. Of St. Albert one can only say: *Si non e vero, e ben trovato*, or even: If he did not exist, he had to be invented. Legendary in the ideal sense of the word as he is, he has a just claim to be regarded as patron of Cashel. In the legend of his life, we find combined the tradition of the Golden Age of Irish missionary activities on the Continent with the new ideas of diocesan episcopacy.

The establishment of diocesan episcopacy is only one aspect of the reform carried out, under Anglo-Norman influence, in the Irish Church of the twelfth century with the aim of assimilating it to the continental Church. The liturgical aspects of this reform and perhaps even more important, and one of the most prominent among these, is the supression of the Celtic custom of naming a church after its founder (real or reputed, or his master) by the custom, then prevalent on the Continent, of votive dedications.[63] Strictly local as it was, the Celtic custom recalls the Church dedication, during the first centuries of the Christian era, to the memory of local martyrs. The gradual extension of a local cultus to greater districts, especially that of the Cathedral Titular to a whole diocese, is an important feature in the development of the liturgical calendar. In Ireland, most churches have to this day no patron in the continental sense, but are simply called after their founder, in many cases a "Saint" who has no other church but this one and who has no liturgical cult. Ireland is, therefore, the only Catholic country the Directory of which does not give the names of church patrons. Where churches in Ireland bear the name of a foreign Saint, the Blessed Virgin, an Apostle or Evangelist or an early Martyr or Confessor, these dedications are Norman or post-Norman. In numerous cases the ancient Celtic "dedication" to the native founder is added to it or has been preserved in place-names.

[61b] Cf. *Vita sti. Rumoldi* (*infra.* p. 36) and the following notes.

[62] Kenney, *op. cit.*, pp. 757 ff.; also the Memoir by Robert King on *The Early History of the Primacy of Armagh* (1854) and J. McCaffrey's introduction to *The Black Book of Limerick* (Dublin, 1907), pp. xxiii ff.

[63] Cf. note 2.

Of a still later date is the introduction into Ireland of the continental custom of giving whole dioceses a patron or of extending the feast of the Cathedral Titular to the whole diocese. The basis for such extension of feasts from the Cathedral to the whole diocese was naturally the establishment of diocesan supremacy. The foundation of the local Church was in many cases the only basis on which a "holy man" (noemh) was actually venerated as a "Saint". The local character of the veneration of native Saints in Ireland (except for the three patrons whose cult, however, attained really national significance only through the Anglo-Normans) accounts also for the paucity of offices of Irish Saints in Ireland. The custom of celebrating the feast of a (native) Saint through a proper Office and Mass was introduced into Ireland as a foreign custom and apparently met with little enthusiasm on the part of the natives. Moreover, when this custom was introduced the creative spirit in liturgical matters had weakened, and in Ireland especially conditions were hardly favourable to revive it. Apart from a late mediaeval office for St. Patrick (from an Armagh Breviary) published by Colgan, only for one other Irish Saint has an Office hitherto been produced from an Irish source, namely for St. Macarten whose feast was prescribed in 1772 as patronal for the diocese of Clogher, a diocese in which St. Malachy firmly established the reform. Since, at the time of the compilation of the first official *Officia Propria Hiberniae*, this office was still unknown, it has found no place among the approved offices. The feasts of Saints Malachy (patron of Armagh, Down and Conor) and Laurence O'Toole, patron of Dublin, were the only feasts of archdiocesan patrons of Ireland which had proper texts before 1903; but for both of these feasts the proper texts were taken from the liturgical text-books of the Canons Regular of the Lateran, one of the foreign Orders who promoted the reform in Ireland and rather generously adopted Irish Saints.[63x]

The very fact that the first official *Officia Propria* in Ireland were not issued for an individual diocese but for the whole country is significant indeed. Up to the beginning of the reform Ireland was just one diocese; the Titular of Armagh, the oldest "metropolitan" see of Ireland, is accordingly the national patron, as *Félire Oengusso* calls him *Pátraic apstal Hérenn.*[63a]

The comparative study of the liturgical status of the patrons of the four metropolitan sees of Ireland throws some new light on the history of the twelfth century reform of the Irish Church, both with regard to the establishment of diocesan episcopacy and with regard to the introduction of the continental way of liturgical devotion to Saints. St. Patrick is only the founder-Titular of the Cathedral of *Armagh*; the diocesan patron is St. Malachy.[63b] St. Jarlath's patronage for the whole archdiocese of *Tuam* did not obtain official recognition until 1863.[63c] St. Kevin is the principal patron of *Dublin* only in virtue of his being the founder-Titular of Glendalough, a see which in the twelfth century was united with Dublin. (In the Church of Ireland this see is still known as that of "Dublin and Glendalough"). The proper patron of the archdiocese of Dublin is St. Laurence O'Toole, next to St. Malachy the greatest Irish advocate of the reform. The joint patronage in Dublin of Saints Kevin and Laurence should be compared to the patronage of Saints Ailbe[64] and Albert in the dioceses of Emly and Cashel (which are now united in both the Catholic and the Protestant Church organisation).

[63x] Cf. my article, 'The Literary Tradition of Irish Saints in the Order of Canons Regular', *Comparative Language Studies* (1945/46).

[63a] Bradshaw Society XXIX (London, 1905), p. 82; Reeves, *The Primacy of Ireland* (Armagh, 1886), pp. 4 ff.

[63b] The History of the Monastery of Wausort (s. xii-xiii; Kenney, *op. cit.*, no. 425, p. 608; MGH, SS XIV, p. 511 = *Acta Sanctorum*, April III, p. 826) describes St. Forannan as *Sc(h)otiae partibus archi-*

The new arrangement made by the synod of Kells in the episcopal organisation of Ireland was partly due to the dissatisfaction shown by the Danes of Dublin with the regulations made at Rathbrassail. "It was unthinkable that the Danes would ever become subject to Cashel, as it had been provided at Rathbrassail."[65] The *Vita sti. Livini* (patron of Ghent)[66] seems to be an early continental reflection on the rise of the metropolitan system in Ireland:

> Livinus was the son of Theognius, a senator under Colomagus, king of the Scoti. When Bl. Augustine, *a beato Gregorio Romanae sedis apostolico pontifice*[67] *transmissus Angligenitarum primus antistes,* came to Colomagus *sui causa negotii*, all the nobility of the kingdom received him with great joy, and, on this occasion the *pontifices*, Augustine, bishop of the Angli, and Menalchius *archipraesul* (in Scotia) baptised Livinus, who was christened after his uncle *Hibernensium Ecclesiae archiepiscopi*[68] who had suffered martyrdom among the Humbrani. At the intimation of an angel, he received his final instruction from Augustine in England. With Augustine's blessing he returns *in patriam*, where after Menalchius's death, he is proclaimed his successor by Colomagus, his court and the people of the whole district (*regio*). *Dignissime* and *debito honore* he is enthroned on the *cathedra archiepiscopatus.* When he received the episcopal blessing (*ut consuetudo est pastores Sanctae Ecclesiae consecrari*) in the presence of several bishops, the clergy and the people, a voice from heaven exclaims: *Ecce sacerdos*

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episcopus, but the *Vita* of this saint by Robert (A.D. 1130-1145; Kenney, *op. cit.*, no. 429, p. 610; *Acta Sanctorum, loc. cit.*, p. 818 B) says that he was *a populorum electus caterva, in civitate quae eorum barbarica sermocinatione Domnachmor nuncupatur, quae est metropolis totius Hiberniae, et in basilica genetricis Dei quam propriis ex reditibus possessionibusque fundaverat, sublimiter in Pontificali collocatus cathedra.* On *Domnachmor* (a literal translation of *Kyriaké megalé*) cf. Colgan, *Acta*, Index; The Bollandists, *loc. cit.*, and O'Hanlon, *op. cit.*, IV, pp. 554 ff. If this is Armagh (cf. my note 46b) where there was in the ninth century an Archbishop Forannan (who, however, died in Ireland), the *Vita sti. Forannani* may be regarded as another attempt to obscure Armagh's claim as derived from St. Patrick in the eyes of ignorant continental readers. Or is this Dublin, in reference to which cf. the expression: *Hiberniae insulae metropolis* which occurs first in Lanfranc's letter to Gothric (A.D. 1074; cf. *infra*. note 67)?

[63c] Cf. note 71.

[64] Cf. note 68i.

[65] O'Doherty, *op. cit.*, p. 17.

[66] Kenney, *op. cit.*, no. 310, p. 509. I quote from PL 87, 335.

[67] This reference to St. Gregory is interesting for various reasons: (a) Angli-Angeli, St. Gregory's famous pun: Beda, *Hist. Eccles.*, II, i, alluded to in the beginning of the *Vita sti. Albarti* (cf. *supra*, p. 25); (b) According to the Annals of Clonenagh (Keating, *History of Ireland*, II, 38, *Irish Text Society* III, pp. 298 ff.), the establishment of the bi-metropolitan system in Ireland followed the example of England, instituted, as Beda (cf. note 33c) says, by St. Gregory. Keating makes this note on the Synod of Rathbrassail to refute Dr. Hanmer's statement that from the time of St. Augustine to the Norman invasion the Irish clergy were subject to the jurisdiction of Canterbury. In his letter to Gothric, King of the Danes at Dublin, Lanfranc said in 1074 (Kenney, *op. cit.*, no. 636, p. 759) that in consecrating Patrick as bishop of Dublin he followed the custom of his predecessors on the chair of St. Augustine. In 1148 a Dublin archbishop bore the name of Gregory.

[68] The *Annales Gandenses*, MGH, SS II, p. 188, describes Livinus as *genere Scotus et Hyberniae archiepiscopus*'. (Not mentioned by Kenney).

> *magnus*, now the key-versicle of the *Ordo ad Recipiendum Processionaliter Prelatum.*

This *Vita* was obviously used by the writer of the *Vita II sti. Rumoldi* (patron of Mechlin), the earliest continental reference to the metropolitan rank of the see of Dublin.[68a] The increase in geographical definiteness in the tradition of St. Rumold is of special interest with regard to the tradition of Saints Erhard and Albert and also with regard to the introduction of real Irish place-names in the thirteenth century tradition of Tristan's journey to Ireland.[68b]

Like the Tristan tradition, the *Vita II sti. Rumoldi*[68c] contains both fictitious and real place-names:

> Rumold was the son of David, king of the Scoti, who resided at Guerviana, and of Cecilia, daughter of the king of *Sicilia* (Ward: *Casilia*!). At the prayer of Guallaferus, *Dublinenis archiantistes*, a son is born to the royal couple who after Guallaferus's death (the *Vita II sti. Rumoldi* uses in this instance exactly the same words as the *Viti sti. Livini*) is elected his successor, *ut par erat* by the unanimous vote of the Canons, and installed, *ut foret* by *Cantuariensis Praesul* and two neighbour bishops. Rumold is introduced into the Cathedral by his Canons and installed *Romano more, non sine celebri caeremonia.*

There is a strict parallelism between the increase of references to English influences on Irish episcopacy and the increase of references to the canonical system of episcopal elections.[68d] In the *Vita sti. Albarti* we hear that Erhard brought Albert from England to Cashel and that the people there unanimously elected him successor to the metropolitan who had died two years before.

[68a] Kenney, *op. cit.*, no. 333, p. 528. The *Vita I* is said to have been written by Thierry of St. Trond about A.D. 1100. Dr. Kenney erroneously states that Thierry already makes Rumold 'to have been a bishop of Dublin'. Thierry speaks only of *Scotia* as Rumold's native country and of Ireland's great missionary tradition (Kilian, Columbanus and Bertuinus). 'For the purpose of giving the see of Dublin a higher antiquity, some writers have had recourse to the period in which St. Rumold flourished'. (M. J. Brennan, *Ecclesiastical History of Ireland* (1840), pp. 264 ff.). Patr. Lynch, *op. cit.*, p. 313, inserts also St. Livinus and St. Wiro (cf. note 68d) into his list of bishops of Dublin.

[68b] Cf. my notes 39, 42 and 69.

[68c] I quote from *Acta Sanctorum*, Jul. I. p. 227.

[68d] The *Vita sti. Rumoldi II* shows most clearly that the *itaque* formula added to the Canons of the Synod of Cashel (*ad instar sacrosanctae ecclesiae juxta quod Anglicana observat ecclesia*) nur bezweckt, die Einheitlichkeit mit der allgemeinen Kirche zu betonen, mit dem Zusatz, dass die Gebräuche der allgemeinen Kirche von England angenommen werden sollten, was die Iren in den neuen Verhältnissen, die sich aus der Unterwerfung für die irischen Behörden ergaben, nicht ungerne taten" (O'Doherty, *op. cit.*, p. 40).

In this respect the *Vita sti. Wironis* (another Irish patron-Saint in the Low Countries) is of special interest: Scotia, uber Sanctorum Patrum insula, stellarum numeris Scotorum coaequans patrocinia, protulit Wironem. Having attained the *Canonicorum graduum ordo*, Wiro *admirans Patricium, Cuthbertum et Columbanum, patriae columnas, terrae lucernas* decides to devote himself to foreign missions. Nec longe post Ecclesia illius patriae, hominem exeunte Pastore, Pastoralis curae solatio destituitur: moxque concordi cunctorum voce Wiro Pastoris officio destinatur . . . Moris erat apud incolas ejusdem insulae, primo Pastorem inter eos eligere, tum electum Romam dirigere, Apostolicis manibus ordinandum, ordinatumque Sedem et plebem revisere. (Electus) Romam tendens non moratur iter arripere . . . Quem plebs applausu, Clerus vocis in jubilo, omnis sexus et aetas populi laudibus attolens suscepit, Episcopalique Cathedrae mox omnium unanimitas praeponit (*Acta Sanctorum*, May II, p. 313; Kenney, no. 311, p. 509: The Life of Wiro seems to be of the ninth century (?): the Lives of Saints Odger and Plechelm (Wiro's companions, of whom one at least was English) are later than, and dependent on, it. They (only the latter two?) have not much value as historical sources).

In the *Continuatio III* of *Annales Claustroburgenses* (s. xiv), Malachias, bishop of Lismore (see *supra* note 33) appears, even to continental standards, as an outstanding champion of the reform in matters of canonical elections: A.D. 1207 Malachias

Similarly Hildegard's *Vita sti. Disibodi*[68e] speaks of an episcopal election by *conventus populi tam minorum quam majorum secundum consuetudinem.* In the *Vita sti. Livini* also the proclamation of the new bishop is still entirely in the hands of secular powers, but the consecration is performed according to the usage of the Holy Church. According to the *Vita II sti. Rumoldi* the whole process of episcopal election and enthronement, under the rule of Canterbury, was carried out in conformity with Roman custom.

As in the case of St. Albert, it is futile to try to reconcile the traditions of Saints Livinus and Rumold with definite biographical facts. *Si plura vis, aut anecdotis Hibernicis delectaris, ipsum adi: nobis non lubet res incertissimas, aliis aequo obscuris involvere*, the Bollandists[68f] remark with their usual acrimony in matters of Irish hagiology. If one recognises the significance of the Lives of Saints Livinus, Disibod, Forannan,[68g] Albert, Wiro[68h] and Rumold as illustrations of the various stages of the formation of Irish-Continental consciousness of the metropolitan system in Ireland, one may take a more generous view of this tradition.

The *Vita sti. Livini*, the *Vita I scti. Rumoldi* and the *Vita sti. Wironis*, also the beginning of the *Vita sti. Disibodi*, expressly refer to the great missionary tradition of Ireland, as they were dealing with Irish (Arch)bishop-Saints who laboured and—through those very Lives—were honoured on the Continent. In the *Vita sti. Albarti* this tradition is understood, and, on the whole, the Irish associations in this work are more digested than in those other *Vitae*. The reason for this is mainly that the Irish associations of the *Vita sti. Albarti* are attached to Cashel. The see of Cashel had not to fight for its elevation to the archiepiscopal rank but apparently had metropolitan rank from the outset. The fact that it did not adopt St. Albe,[68i] the ancient patron of the Church of Emly (to whose diocese it formerly belonged), is a sign of a strong sense of independence and of a tradition which found its expression in the description given of the see of Cashel in the *Vita sti. Albarti.*

With the significant exception of Tuam (Connaught), the metropolitan sees of Ireland have been given patrons associated with the reform. With regard to the eighteenth and nineteenth century history of episcopal loyalism in Ireland, it may be noted that as exponents of the ecclesiastical reform, these three patron Saints also advocated friendship between Ireland and England.[69] In the tradition of St. Albert this idea has been carried so far as to make the

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Lesmorensis episcopus Roma veniens, ex cuius auxilio et intercessione pro conventu ad dominum ducem Marcus unanimiter et canonice coram episcopo Lesmorensi eligitur et in Patavia (Passau) a Manegoldo honorifice consecratur (MGH, SS IX, p. 634). This Malachy was probably an Englishman (Power, *op. cit.*, p. 7). For the history of canonical elections in the Irish Church see Seymour's contributions to *History of the Church of Ireland* ed. Philips (1934), II, p. 87.

[68e] *Acta Sanctorum* July II, p. 589.

[68f] Cf. note 68c.

[68g] Cf. note 63b.

[68h] Cf. note 68d.

[68i] Kenney *op. cit.*, no. 122, p. 314, also Gleeson, *loc. cit.*, (my note 22). The oldest manuscript of the *Vita sti. Albei* speaks of this Saint as *alter Patricius*. Probably under the influence of the tendency, spreading to Emly, to elevate Cashel at the expense of Armagh, the later *Ms.* S describes St. Patrick as *totius Hiberniae insulae secundus patronus*" (Plummer, *op. cit.*, I, p. 46). Compare the expression *Declanus Patricius Deciorum* (Kenney, *op. cit.*, p. 313).

The Protestant Cathedral of Cashel is dedicated to Saints Patrick and John the Baptist; the dedication to St. Patrick is, in this case, purely votive.

[69] Landing at Wexford (Weisefort(e)), Tristan wins Isolde for the king of Cornwall, thus bringing about lasting peace between the two countries. All the people rejoice that thus comes to an end *langes hazzen* between England and Ireland (Gottfried, v. 11385; French prose-version (ed. Bédier in *Roman de Tristan*, II (Paris, 1905), Append. i, p. 333 and p. 340; even the Norwegian version (ed. Kölbing (Heilbronn, 1878), xlv), though according to it, Tristan's second landing also takes place near Dublin (cf. my notes 39 and 42). The king residing at Weiseforte (Gottfr., v. 8735) seems to be Dermot McMurrough, king of Munster, to whom in 1161, the high-king of Ireland conceded also the kingdom of Leinster. Guerviana, according to *Vita II sti. Rumoldi*, the residence of king David, has been

Saint actually an Englishman. I suggest that from this view-point the tradition of Saints Erhard and Albert as established by the *Vita sti. Albarti*, should be compared with the tradition of Saints Egbert and Adalbert, which in the tenth century was placed on record in Egmont:[70]

> Quomodo Egbertus Northumbrorum episcopus patriam deserens, in Hiberniam migravit, illoque sanctus Adalbertus eum secutus fuit cum plurimis. Studio peregrinationis et ardore vitae remotioris in Hiberniam secessus, ad eum tam Anglorum quam Scotorum convolevant.

As a foreigner by both birth and tradition, St. Albert takes an intermediary position between the native founder—titulars (as St. Jarlath originally was in Tuam)[71] and foreign Saints adopted as patrons through votive dedications (such as St. Nicholas, patron of Galway).[72] There is only one diocesan patronage in Ireland which holds a similar intermediary position. Of the see of Waterford, for the erection of which the Danes obtained St. Anselm's permission in 1069, the historical lessons prescribed in 1903 for the feast of St. Otteran, tell us:

> Hi igitur Dani, Patronum quaerentes, apud Deum cum servi Dei recordarentur, laeti Diocesim seseque sanctae tutelae Otterani commiserunt.

St. Otteran has no direct local associations with the Waterford district; therefore, this is the earliest votive dedication to an Irish Saint in Ireland. It is characteristic that it was made by the Danes, and that St. Otteran was probably confused with his name-sake, St. Patrick's charioteer, "the only martyr of the early Irish Church".[73]

When in the eighteenth century, the archbishop of Cashel decided that his diocese too should have a "proper" patron, he adopted a Saint who, though being historically more shadowy, had, in the traditional Irish sense, a better claim to this honour than had St. Otteran in Waterford. Though at that time the archbishop of Cashel was the leader of Irish loyalism,[74] we may doubt whether

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identified by Ward with *Guere an Ri, Gueria Regia, distans Dublinia 73 milia passuum* towards Wexford. Can Gottfried's *künec herre von Irlant* be identified with either Colomagus, Livinus's uncle, or with David, Rumold's father? May we compare the description of Irish reaction to Isolde's marriage with Marke with the reference made in the *Vita II sti. Rumoldi* to the joy shown by the *Scoteni* at the marriage of David with Cecilia (a Latinisation of Isolt?) from Sicily, the centre of the Norman Empire? Gottfried's description of the assembly of the *landbarûne* at Wexford may be compared with the description of the festive meeting at Lismore in the *Vita sti. Albarti* and the gatherings at Colomagus's residence in the *Vita sti. Livini.*

[70] *Vita et Miracula sti. Adalberti Egmond.*, MGH, SS XV, p. 700. The name of Albert was known in mediaeval Ireland as German (*Almain*; cf. Gwynn, *RIA* XXVI (1906), p. 32 and Grosjean, *Zeitschrift für keltische Philologie* XIX (1931), pp. 65 ff.). Towards the middle of the thirteenth century, Albert Suerbeer O.P. was Archbishop of Armagh.

[71] Ideoque Jarlathus Ecclesiam aedificavit quo in loco per plura saecula exstitit Ecclesia Metropolitana Tuamensis . . . Ibi per longum tempus ejus reliquiae maxima reverentia fuerunt reservatae. *Proprium Hiberniae*, June 6. These lessons were compiled by John Healy. Cf. also H. T. Knox, *Notes on the Early History of . . . Tuam*, (1904), p. 63 and D'Alton, *History of the Archdiocese of Tuam* I (1928), pp. 31 ff.

[72] Cf. my article 'St. Nicholas's Bread', Béaloideas XIV (1943), pp. 265 ff.

[73] What O'Hanlon, *op. cit.*, II, p. 634 has said on St. O. has become obsolete through the account given by the Bollandists (*Acta Sanctorum*, Oct. XIII, p. 174) of the rather doubtful tradition of this saint. Cf. also Holweck, *Biographical Dictionary of the Saints* (1924), pp. 751 ff. If the place name *Kilotteran* (*Waterford Archeological Journal* I, p. 171, and XI, p. 166) really points to a patronage, it is an open question whether this is a patronage in the Celtic or the Danish-continental sense (cf. Power, *op. cit.*, pp. 49 ff.).

[74] On the controversy on the Oath of Allegiancy between Archbishop Butler of Cashel and Thomas de Burgo (cf. *supra* p. 21), and on Dr. Carpenter's attitude towards this controversy cf. Bellesheim, *Geschichte der katholischen Kirche in Irland*, III (1891), pp. 137 and 718.

he would have adopted St. Albert had he known the original *Vita* of this Saint and the true historical significance of his tradition.[75]

In the later Bavarian tradition, on which this adoption was based, this significance had become lost. This is most obvious in the change made of the word *Artinacha* into *Arda(c)ha.*[76] Whether or not it was Hochward by whom this change was made, the study of the tradition of St. Albert may permit us to conjecture the cause of it. While being unaware of the interpretation given to that word in the tradition of the *Visio Tundali* and, less expressly, in the *Vita sti. Albarti* itself, the person who made that change must have had a certain knowledge of Irish ecclesiastical history and geography. As the form *Artinacha* was unknown to him, he assumed that it was a corruption of the name of an Irish bishopric, because the writer of the *Vita sti. Albarti* expressly described St. Erhard merely as *episcopus* apparently in contrast with the description of St. Albert as *archiepiscopus.* Thus, we may say, this later writer and with him the whole tradition right down to this day went into the trap which the writer of the *Vita sti. Albarti* had ingeniously set.

The raising of Irish Saints to the rank of archbishops in Ireland is a new feature in the continental tradition of Irish Saints in general. It must be distinguished from the description of Irish Saints as bishops, as frequently found in the continental tradition. While the "craze" for Irish Saints in general may be ascribed to both the nationalism of Irish clerics on the Continent and the continental longing for links with the Island of Saints, the description of Irish Saints as bishops may be ascribed either to the Irish tradition of monastic "bishops" or to continental longing for important Irish Saints.[77] The introduction of "archbishops" in this tradition must be regarded as expressive of continental-Irish consciousness of Ireland's being the latest country in the Western Church to adopt the metropolitan system.

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[75] The *Vita sti. Albarti* illustrates the opinion that the cultural and religious life of the twelfth century Irish Church greatly benefited from Anglo-Norman influence. This opinion was authoritatively represented by Saints Malachy (and Bernard) and Laurence O'Toole. Marcus, the author of the *Visio Tundali,* and Robert, the author of the *Vita sti. Forannani,* refer to the Irish language as barbaric.

[76] The various stages of this change may be traced from sources which, to my knowledge, have never been hitherto studied for this tradition. Onsorgius's *Chronicon Bavariae* (1422) was apparently the first work to give the spelling *Ardinacensis* (Oefeli, *Rerum Boicarum Scriptores* (Augsburg, 1763), I, p. 154). The same spelling is found in the letter which Martin, a monk of St. Emeran in Ratisbon, wrote to Colman, a monk of the (formerly) Irish Monastery of St. Giles at Nurremberg, who was about to compile a chronicle of the *Scoti* in Ratisbon and Nurremberg (*ibid.*, pp. 346, 340 ff.) and in Veit Arnpek's *Chronicon Bajovaricorum* (Landshut, 1495) first printed by Pez, *op. cit.*, III, iii, col. 94. Arnpek is, in this case, not dependent, as he usually is, on Andreas Ratisbonensis (*Allgemeine Deutsche Biographie* I (1875), pp. 596 and 448), whose *Diarium Sexennale* (Oefeli, op. cit., p. 19) refers to the revival of the devotion to St. Erhard in 1423 without mentioning his episcopacy in Ireland and without referring to St. Albert. Arnpek obviously knew the *Vita sti. Albarti* as he speaks of *Albardus Caselensis archiepiscopus. Anonymi Farrago Historia Rerum Ratisponens.* (1529, cf. Oefeli, *op. cit.*, II, p. 499) adds to this the description of Erhard as *episcopus Ardinacensis.* Hochward's changing over to *Ardakadensis* (cf. note 19b; Oefeli, *op. cit.*, p. 163) is most remarkable; he, and based on him, Hund are the only Ratisbon writers to remember that Albert was *Anglicus natione.*

[77] In the case of St. Marinus, patron of Rott in Bavaria (MGH, SS XV, p. 1069; Kenney, *op. cit.*, no. 316, pp. 511 ff.) and St. Disibodus (cf. *supra* note 68e; Kenney, *op. cit.*, no. 318, p. 513), it was not until the late twelfth century that their description as bishops in Ireland was introduced. Of St. Cataldus, *archiepiscopus Rachau,* (closely associated with Lismore), now the patron of Taranto, (Kenney, *op. cit.*, no. 41, p. 185), the most important parallel to St. Albert, I shall treat in another article.

A Fifteenth-Century English Chaucerian:

The Translator of *Partonope of Blois*

B. J. WHITING

STUDENTS of English literary history are inclined, wrongly enough, to regard the fifteenth century only in relation to what had preceeded it or was to follow. We either look for traces of giants gone before or listen for an optimistic hylodes peeping in the Renaissance. In general, the highest praise given fifteenth century writers is based on their admiration for Chaucer, and we grade them in accordance with their knowledge of and affection for the great poet. The better known writers have long since been evaluated in this regard, and in the present paper I shall offer material to suggest that we must add another author, however humble and anonymous, to the roster of those who read Chaucer with discrimination and retentiveness.

Many readers of the fifteenth-century English romance Partonope of Blois[1] have doubtless noticed the author's indebtedness to Chaucer, but Mrs. Loomis seems to have been the first to record the impression:

> A careful study of the *Partonope* would show, it seems to the writer, not only Chaucerian influence in the phraesology, but also a real appreciation of the artistic effectiveness of the French poem.[2]

It is not my purpose to discuss the English author's general treatment of the story of *Partonopeus*,[3] although several readings have given me a more favorable impression of it than some critics have received.[4] That the English poem is sometimes tedious is undeniable, but so, to speak truth, is the French original and often in the same scenes. The English poet omits or curtails many descriptive passages, but he expands the amount of dialogue and the result is frequently extremely effective. More than all else, however, he proves himself to have been steeped in the writings of Chaucer, whom he never names, but with whose works he shows a greater intimacy than do many of his fellows who load the earlier poet with personal praise and professions of discipleship. In the following pages I shall point out the most important

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[1] Ed. A. Trampe Bödtker, EETS., ES., CIX (London, 1912); a promised second volume of introduction and notes never appeared. Our concern is with the British Museum (Addit. Ms. 35,288) manuscript of the longer English version. The University College Oxford and the Rawlinson manuscripts have no Chaucerian material not in the fuller text, while the very fragmentary shorter version contains nothing of immediate interest.

[2] Laura Hibbard Loomis, *Mediaeval Romance in England* (New York, 1924), p. 203. A number of parallels between Chaucer's writings and *Partonope* had been quoted by G. L. Kittredge, 'Authorship of the Roumaunt of the Rose', *Harvard Studies and Notes in Philology and Literature* I (1892), 1-65. Professor Roland M. Smith refers to the "imposing array of parallels", but adds, "I believe a strong case can be made, however, for the view that the Middle-English *Partonope* was written before 1400 and was known to Chaucer, as against the theory of Miss Hibbard . . . that the romance was 'translated' under Chaucer's influence". 'Two Chaucer Notes: 1. the Name of Sir Thopas', *Modern Language Notes LI* (1936), 314, n. 2. After this paper was in print, Professor Johnstone Parr, 'Chaucer and Partonope of Blois', *Modern Language Notes* LX (1945), 486-487, pointed out several parallels between Chaucer and *Partonope*, and argued, *contra* Professor Smith, that the author of the romance was the borrower.

[3] Ed., with a lacuna of 1040 lines, by G.-A. Crapelet, 2 vols. (Paris, 1834).

[4] Notably J. E. Wells, *A Manual of the Writings in Middle English, 1050-1400* (New Haven, 1915), p. 146.

Chaucerian passages in *Partonope*.[5] The deadly parallel can often be more fatal to its manipulator than to anything else and I shall try to avoid the appearance of presumption by dividing my material into groups which differ considerably as evidence. First we may take a number of quotations which seem fairly clear borrowings from Chaucer.[6]

(1) For þorowe þe worlde þys fowle ffame
Was so dryffe and forth I-blowe;
Thorowe alle londys hyt was knowe (pp. 5-6, ll. 179-80).
This Eolus gan hit so blowe
That thrugh the world hyt was yknowe (*HF* 1769-70; cf. ll. 1639 ff.).

(2) Ther-In dwelluthe mony a wylde beste (p. 13, l. 461).
Therinne is many a wilde best (*CT* VII[B], 755 [1945]).[7]

(3) Thys kynge Cleouels, þys worthy manne,
Syn ffryste þe tyme that he be-gan
Crowne on hedde ffryste to bere (p. 13, ll. 480-2).
A Knyght ther was, and that a worthy man,
That fro the tyme that he first bigan
To riden out (*CT* I[A], 43-5).

(4) Of Ientylnes he was the verey welle (p. 14, l. 509).
Loo, yender goþe the welle of gentylnes (p. 52, l. 1857).
Ne souferra la gentillece
Que jà faciés rien fors noblece (I, 52, 1507-8).
That semed welle of alle gentillesse (*CT* V[F], 505).

(5) And hys herte fulle nere quappynge (p. 32, l. 1180).
Hys herte so sore gan quappe tho (p. 247, l. 6446).
His heere gan warpe, his colour gan chaunge (p. 367, l. 8973).
His hert gan qwappe, his coloure gan change (Univ. Coll. MS., l. 8973).
His hert gan whape, his coloure chaunge (Rawl. MS., l. 8973).
Hir herte in hire body gan to qwape (p. 438, l. 10840).
And Lord, so that his herte gan to quappe,
Herying hire come (*TC* iii, 57-8).[8]
And lik the wawes quappe gan hire herte (*LGW* 865).

(6) He was but yonge and tender of age (p. 40, l. 1495).
She is þerto but right tendre of age (p. 322, l. 8015).
Or for his tendre age also (*Rom.* 6725).
But thogh this mayde tendre were of age (*CT* IV[E], 218).
Than is Grisilde, and moore tendre of age (*CT* IV[E], 989).
Unto som mayde fair and tendre of age (*CT* IV[E], 1407).

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[5] All quotations from Chaucer are from F. N. Robinson, *The Complete Works of Geoffrey Chaucer* (Boston, 1933). I hardly need express my enormous debt to J. S. P. Tatlock and A. G. Kennedy's *Concordance to the Complete Works of Geoffrey Chaucer* (Washington, 1927).

[6] Unless otherwise indicated the French text contains nothing which could have suggested the English idea or phraseology. I have pointed out the passages for which the French text is wanting, but it is unlikely that the missing lines would be of more significance than those which are available. The passages are arranged with the romance first, the French, wherever pertinent, second, and Chaucer third.

[7] The French forest contains elephants, wyvers (*guivres*) and dragons, *Partonope* lions, leopards, boars and bulls, and Chaucer's, as we know, harts and hares.

[8] NED, *s.v.* quap, quotes Chaucer, Wyclif's Bible, and then *Partonope*.

Hir fresshe beautee and hir age tendre (*CT* IV[E], 1601).
For he so yong and tendre was of age (*CT* VII[B], 524 [1714]).

(7) Ouer here hys arme he gan to laye (p. 41, l. 1535).
Vers li se traist, et mist se main
Sor son costé (I, 44, 1267-8).
Hys arme ffreshely he ouer her caste (p. 42, l. 1558).
Coardement r'a se main mise
Vers le bele qui lẹ justise (I, 44-5, 1283-4).
And therwithal hire arm over hym she leyde (*TC* iii, 1128).
And over hym leye my leg outher myn arm (*CT* III[D], 1828).

(8) Hyt was me shape or then my serke (p. 47, l. 1716).
Syn fyrst that day that shapen was my sherte,
Or by the fatal systren had my dom (*LGW* 2629-30).
That shapen was my deeth erst than my sherte (I[A], 1566.[9]

(9) þat I be-sette my loue In so goode a place (p. 53, l. 1864).
That thow biset art in so good a place (*TC* i, 905).

(10) Se þe sonne he[r] bemus sprede In so bryghte
þat all þe chamber was laughynge lyghte (p. 55, ll. 1931-2).
And firy Phebus riseth up so bright
That al the orient laugheth of the light (*CT* I[A], 1493-4).[10]

(11) I fare thenne as y ne felte
Gode ner hylle, but lye ynne a trawnce (p. 70, ll. 2326-7).
That lay, as do thise lovers, in a traunce
Bitwixen hope and dark disesperaunce (*TC* ii, 1306).
And wex so mat, that joie nor penaunce
He feleth non, but lith forth in a traunce (*TC* iv, 342-3).

(12) God schelde me euer fro that mischaunce
To hoppe so ferre ynne loue-ys dawnce (p. 70, l. 2333-4).
"How ferforth be ye put in loves daunce?"
"By God," quod he, "I hoppe alwey byhynde!" (*TC* ii, 1106-7).

(13) I sorrowfulle wreche and wofulle caytyfe (p. 191, l. 5052).
Et se claime lasse, çaitive (I, 134, l. 3923).
Two woful wreeches been we, two caytyves (*CT* I[A], 1717).

(14) Fresshe and lusty ys Partonope;
For in hys armes hys loue haþe he (p. 200, ll. 5274-5).
A gerland, fressh and lusty for to sene (*CT* I[A], 2176).
I wol with lusty herte, fressh and grene (*CT* IV[E], 1173).
That hast thy lusty housbonde in thyne armes,
The fresshe knyght, the worthy man of armes (*CT* V[F], 1091-2).

(15) And þes wemmen had well I-ronge
Here belle, wyche was heuy to here (p. 236, ll. 6139-40).

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[9] Laura A. Hibbard Loomis, "Chaucer's 'Shapen was my sherte,'" *PQ*, I (1922), 222-5. Mrs. Loomis notes the occurrence of the phrase in Lydgate's *Complaint of the Black Knight*, ll. 489 ff.

[10] Ultimately from Dante, *Purgatorio*, i. 20.

Thorughout the world my belle shal be ronge!
And wommen moost wol haten me of alle (*TC* v, 1062-3).

(16) Was holden one off the ffayreste
That was on lyue, and þer-to þe goodelyste (p. 238, ll. 6184-5).
I am oon the faireste, out of drede
And goodlieste (*TC* ii, 746-7).

(17) And of þi woo vnbockle þi male (p. 287, l. 7308).
This gooth aright; unbokeled is the male (*CT* I[A], 3115).
Unbokele, and shewe us what is in thy male (*CT* X[I], 26).[11]

(18) She is so full of gentilnesse. . . .
Hir herte is full of pite and rouþe (p. 295, ll. 7465-9).
But pite renneth soone in gentil herte
(*LGW* F 503; also *CT* I[A], 1761, II[B], 660, IV[E], 1986, V[F], 479, 483).
Had suche pittee and such rowthe (*BD* 97).
The moste pitee, the moste rowthe (*BD* 465).
And thus, for pite and for gentillesse (*LGW* 1249).
It is a routhe and pite for to here (*LGW* 1080).
But wente his wey, for routhe and for pitee (*CT* IV[E], 893).

(19) And wexe lusty þat, by my hode (p. 308, l. 7719).
I commende hire wisdom, by myn hood, (*TC* v, 1151).
That is a trewe tale, by myn hood (*LGW* F 507).[12]

(20) Thus seith myn auctour after whome I write.
Blame not me: I moste endite
As nye after hym as euer I may,
Ne it soþe or less I can not say (p. 309, ll. 7742-5).
And what she thoughte, somwhat shal I write,
As to myn auctour listeth for t'endite (*TC* ii, 699-700).
He moot reherce as ny as evere he kan
Everich a word, if it be in his charge (*CT* I[A], 731-3).
Blameth nat me if that ye chese amys (*CT* I[A], 3181).

(21) I trow they lust neþer sing ne daunce (p. 311, l. 7787).
Him luste not to play ne sterte,
Ne for to dauncen, ne to synge (*Rom.* 344-5).
But trusteth weel, hire liste nat to daunce,
Whan that she wiste wherfore was that sonde (*CT* II[B], 1048-9).

(22) The fyres darte of love so smerte
So þrilled hadde hir meke herte (p. 374, ll. 9118-9).
Thus am I slayn with Loves fyry dart (*Complaint to his Lady* 36)
Love hath his firy dart so brennyngly
Ystiked thurgh my trewe, careful herte (*CT* I[A], 1564-5).[13]

(23) I haue bore you on honde þe cowe was wode (p. 424, l. 10282).
Bere hym on honde that the cow is wood (*CT* III[D], 232).[14]

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[11] *NED, s.v.* unbuckle, gives no examples save Chaucer and *Partonope.*

[12] *NED s.v.* hood 1c, gives no examples between Chaucer and John Heywood.

[13] The French (II, 86-7) has the idea, but not the phraseology.

[14] *NED, s.v.* chough, gives no examples between Chaucer and 1528.

(24) And Gaudyn despitously they haue take,
And fiersly ledde hym toward þe stake
Or to the stondarte, where euer it be (p. 431, ll. 10550-2).
Si ont Gaudin moult defolé,
Sus l'ont de le terre ravi,
Si l'enportent tot estordi (II, 129, ll. 8812-4).
Many to þe standardte were I-bore (p. 432, l. 10606).
And he that is at meschief shal be take
And noght slayn, but be broght unto the stake
(*CT* I[A], 2551-2; cf. 2617-8, 2641-2, 2648, 2723).[15]

(25) And for wery of fight soem are I-take
And magre her hede ben ladde to þe stake (pp. 446-7, ll. 11142-3).
French text wanting.
He thurgh the body is hurt and sithen take,
Maugree his heed, and broght unto the stake (*CT* I[A], 2617-8).

(26) Ye wote wele of all þing moste be an ende,
The Day is nye ydo, þe sonne doþe faste wende (p. 447, ll. 11144-5).
French text wanting.
Som tyme an end ther is of every dede.
For ere the sonne unto the reste wente (*CT* I[A], 2636-7).

(27) Men seide she was an hevenly þing.
It was Impossible, thei seide, þrugh nature
Might be broght forþe suche a creature (p. 456, ll. 11461-3).
French text wanting.
Nas non so fair, for passynge every wight
So aungelik was hir natif beaute,
That like a thing inmortal semed she,
As doth an hevenyssh perfit creature,
That down were sent in scornynge of nature (*TC* i, 101-5).

(28) In many a mortall battaille haþe he be.
In listes often eke fought haþe he,
And euer of his Enemeyce þe better haþ hadde (p. 469, ll. 11858-60).
At many a noble armee hadde he be.
At mortal batailles hadde he been fiftene,
And foughten for oure feith at Tramyssene
In listes thries, and ay slayn his foo (*CT* I[A], 60-3).

A second and more numerous group of quotations gives evidence of the romancer's thorough-going familiarity with Chaucer's literary idiom. In many cases, if not most, it would be difficult to claim direct borrowings, but the aggregate is significant, especially when considered in addition to the passages already quoted.

(1) He was to hem a nobulle gouernowre (p. 11, l. 387).
This Pompeus, this noble governour (*CT* VII[B], 2688 [3878]).

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[15] With the rest of the second passage in *Partonope* (ll. 10600-7) compare *CT* I[A], 2599-2620. There is a general resemblance, as though the author of *Partonope* had attempted a pale imitation; the French version gives no comparable details.

(2) A-monge hem Ioye, welthe, and prosperite (p. 12, l. 410).
The jôye, the ese, and the prosperitee (*CT* V[F], 804).

(3) Wyth hvnte and hownde as he was won. . . .
The hornes sownen as any belle (p. 15, ll. 531-3).
With hunte and horn and houndes hym bisyde (*CT* I[A], 1678).

(4) Tylle on the morowe þat hyt was dâye (p. 18, l. 669).
Til on the morwe, that it is dayes lyght
(*LGW* G 54; also *CT* I[A], 2491, VII[B], 3025 [4215]).

(5) Hys a-venture he moste a-byde (p. 22, l. 814).
And ly right there, and byd thyn aventure (*TC* ii, 1519).

(6) But he þat made bothe Este and weste,
Safe me (p. 30, ll. 1115-6).
For by that Lord that formede est and west (*TC* ii, 1053).

(7) Borne and broghte forþe of heye parage (p. 40, l. 1496).
Ne noon so high is of parage (*Rom.* 4759).
And if that she be riche, of heigh parage (*CT* III[D], 250).
For which we clayme to been of heigh parage (*CT* III[D], 1120).[16]

(8) And euer-more gladde to do yowe plesauns
A-bofe alle other creature (p. 48, ll. 1730-1).
This made, aboven every creature,
That I was youre (*TC* iv, 1679-80).
Youre owene aboven every creature (*TC* v, 154).
To yow aboven every creature (*CT* I[A], 2769).
Aboven every worldly creature (*CT* IV[E], 826).

(9) And I shulde lese my name for euer-moo (p. 53, l. 1877).
And lesith his worshipp and his name (*Rom.* 4915).
And don hym leese his goode name (*Rom.* 6936).
"But syn my name is lost thourgh yow," quod she (*LGW* 1361).
and also lese
Thy name (*LGW* 1810-1).
Don as Tereus, to lese his name (*LGW* 2389).
And seyde, "Ther wol I nat lese my name" (*CT* VI[C], 611).

(10) Thys droffe he fforþe wyth ffayre syghte
The longe day, tylle hyt was nyghte (p. 60, ll. 2077-8).
This longe tyme he dryveth forth right thus (*TC* v, 680).
And thus the day they dryve to an ende (*LGW* 2620).
Honest ynough to dryve the day awey (*CT* VI[C], 628).

(11) Tellethe me nowe, myne owne herte dere (p. 62, l. 2118).
Dwelle rather here, myn owen swete herte (*TC* iv, 1449).
Whan she forgoth hire owen swete herte (*TC* v, 63).
Iwis, myne owene deere herte trewe (*TC* v, 1401).

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[16] *NED*, *s.v.* parage, gives no examples between Chaucer and Caxton.

(12) That love hath sende hym succhе a make
That he may bathe ynne so hye a blysse (p. 69, ll. 2304-5).
þus in endlesse blisse baþed thei be,
The good hertes of þes lovers two (p. 479, ll. 12137-8).
Of al this blisse, in which to bathe I gynne (*TC* ii, 849).
Shal now no lenger in hire blisse bathe (*TC*, iv, 208).
For joye he hente hire in his armes two,
His herte bathed in a bath of blisse (*CT* III[D], 1252-3).

(13) And lokyth alle-way thatt ye be trewe
To me and chancheth for no newe (p. 72, ll. 2393-4).
Et vostre amie foi portés,
Qu'à nule autre n'aiés amor
Ne n'en prendés nule à oissor (I, 65, ll. 1902-4).
Alwey til oon, and chaungeth for no newe (*Anel.* 219).
I telle hyt, for she was of love so trewe,
Ne in hir wille she chaunged for no newe (*LGW* 1874-5).

(14) And kyssed hym wyth dedely chere (p. 80, l. 2595).
And sowned wyth a dedely chere (p. 222, l. 5868).
I sey for me, for al my deedly chere [(*Comp. d'Amours* 27)].
Who coude wryte which a dedly cheere (*LGW* 869).
What she hadde swowned with a deedly cheere (*CT* I[A], 913).

(15) There-fore off Cheualrye he ys namyd folowre (p. 83, l. 2682; also p. 85, l. 2734; 97, 3044-5; 128, 3706; 135, 3858; 181, 4867; 216, 5685-6).
And in his hoost of chivalrie the flour (*CT* I[A], 982).
That goode Arcite, of chivalrie the flour (*CT* I[A], 3059).
And he that was of chivalrie the flour (*CT* V[F], 1088).

(16) To Fraunce was he a stronge poste (p. 97, l. 3037).
Wyche ys to hym Ryghthte a grete poste (p. 107, l. 3240).
To þe morreis kyng he was a good poste (p. 408, l. 9847).
That thow shalt ben the beste post, I leve,
Of al his lay (*TC* i, 1000-1).
Unto his ordre he was a noble post (*CT* I[A], 214).[17]

(17) Ye buthe alle bothe ware and wyse (p. 100, l. 3097).
But wys, and war, and vertuous (*Rom.* 1258).
A Sergeant of the Lawe, war and wys (I[A], 309).
This marchant, which that was ful war and wys (*CT* VII[B], 365 [1555]).[18]

(18) I-armed they were fulle ffresche and gaye (p. 131, l. 3768; also p. 135, l. 3860; 305, 7659; 337, 8343; 365, 8937; 388, 9406; 389, 9442; 432, 10595).
That I was born, and make me fressh and gray (*CT* III[D], 298; also III[D], 508; V[F], 622; VII[B], 2122 [3312]; VIII[G], 724).

(19) Nowe arte þou ded, wyche were þe fflowre
Off alle þe knyghthode (p. 168, ll. 4587-8).
Which in his tyme bare þe floure

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[17] NED, *s.v.* post II, 6, gives Chaucer, then Lydgate ("broken poste") and then 1536.

[18] NED, *s.v.* ware *a*, 5, gives enough examples to suggest that the phrase was pretty common.

Of knyghthode (p. 290, ll. 7375-6).
He was of knyghthod and of fredom flour (*CT* VII[B], 2642 [3832]).

(20) And þat I wotte well he lacked no manhole (p. 168, l. 4600).
And of manhod hym lakkede right naught (*CT* [A], 756).

(21) Here hertys were heuy and no-þynge lyghte (p. 174, l. 4727).
Ful hevy, gret, and nothyng lyght (*Rom.* 1105).

(22) Here forehede was brod (p. 194, l. 5155).
Cevels a blois, front large et blanc (I, 136, l. 3987).[19]
But sikerly she hadde a fair forheed;
It was almost a spanne brood, I trowe (*CT* I[A], 154-5.

(23) here browes bent (p. 194, l. 5155).
With bente browis smothe and slyke (*Rom.* 542).
Bente were hir browis two (*Rom.* 861).
With eyen gladde, and browes bente (*Rom.* 1217).

(24) Off sangweyne was hur complexione (p. 194, l. 5158).
Lèvre sanguine auques grossete (I, 136, l. 3990).
Of his complexioun he was sangwyn (*CT* I[A], 333).

(25) The skynne of hur necke was lyly whyte (p. 194, l. 5160).
Col lonc et blanc (I, 136, l. 3991).
His nekke whit was as the flour-de-lys (I[A], 238).

(26) She wes not lene, but flesly a lyte (p. 194, l. 5161).
Longe est et gente, et graille et crase (I, 136, l. 3992).
For, hardily, she was nat undergrowe (I[A], 156).

(27) Smale armes she had and hondys ffayre (p. 195, l. 5162).
Lons a les bras et grailles mains (I, 136, l. 3993).
Off hur shappe, or of hur armes smalle (p. 238, l. 6180).
Som for hir handes and hir armes smale (III[D], 261).

(28) She was curteyse, lowly, and debonayre (p. 195, l. 5163).
The provoste was curteyse and debonayre (p. 273, l. 6992).
Fre, curteise, stable, and debonaire (p. 323, l. 8029).
As curteis shulde and debonaire (*Rom.* 5081).
Curteis he was, lowely, and servysable (*CT* I[A], 99).
Curteys she was, discreet, and debonaire (*CT* VII[B], 2871 [4061]).

(29) She was as freshe as þe rose in maye (p. 195, l. 5167).
And she was fayr as is the rose in May (*LGW* 613).
I koude walke as fressh as is a rose (*CT* III[D], 448).

(30) And so they dronke þat boþe they bene
Welle I-wette (p. 196, ll. 5197-8).
So was hir joly whistle wel ywet (*CT* I[A], 4155).[20]

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[19] The description of the king's niece (pp. 194-5, ll. 5148-5168; French, I, 136, ll. 3985-93) seems to have been influenced by a number of passages in Chaucer, particularly scattered lines in the *General Prologue*.

[20] *NED*, *s.v.* wet *v*, 7b, gives *Partonope* as first example and (probably correctly) does not connect the two idioms.

(31) Beynge boþe in so preuey a place (p. 198, l. 5231).
And also in another privee place (*CT* III[D], 620).
That in an aleye hadde a privee place (*CT* VII[B], 568 [1758]).
Youre adversaries in privee place (*CT* VII[B], 1720 [2910]).

(32) For Gode me so helpe as wyslye
I gaffe yowe cause neuer why (p. 209, ll. 5526-7).
And as wissely God helpe me so (p. 458, l. 11542).
French text missing.
And seyde, "As wisly helpe me God the grete,
I nevere dide thing with more peyne (*TC* ii, 1230-1).

(33) Never full dedde, but euer dyinge (p. 210, l. 5545).
Et à tos jors vivre morant (I, 144, l. 4232).
Lyffe euer, and neuer Dye (p. 248, l. 6481).
Ainz doi tozjorz morant languir:
Morz ne velt pas longues durer (II, 7, ll. 5220-21).
Ofte to dey and neuer full dede (p. 347, l. 8563).
Always deynge and be not ded (*BD* 588).

(34) Thus hath loue quytte me my mede (p. 223, l. 5885).
The blisful martir quite yow youre meede (*CT* I[A], 770).

(35) For me þoghte hyt taryed grette tyme (p. 237, l. 6173).
Sey forth thy tale, and tarie nat the tyme (*CT* I[A], 3905).

(36) In Ioye they ledde forthe ther lyffe (p. 248, l. 6476).
Et puis vesqui en joie assez (II, 7, l. 5211).
And lede his lyf in joye and in solas (*CT* IV[E], 1273).
(37) This palfray was pomell gray (p. 266, l. 6852).
That was al pomely grey and highte Scot (*CT* I[A], 616).
His hakeney, that was al pomely grys (*CT* VIII[G], 559).[21]

(38) And he þat was of cares colde (p. 269, l. 6904).
Haue mercy on lovers þat in cares colde
Loved (p. 401, ll. 9695-6).
Bothe of his joie and of his cares colde (*TC* i, 264).
But Troilus, al hool of cares colde
(*TC* iii, 1202; also iii, 1260; v, 1342, 1747; *LGW* 762; *CT* V[F], 1305).
As he that felte dethes cares colde (*TC* iv, 1692).
To whom that savede thee from cares colde (*death*) (*LGW* 1955).
That was ybounde in synne and cares colde (VIII[G], 347).

(39) Bot now I wote wele þe peynes smert
Of deþe in shorte tyme I mote fele (p. 274, ll. 7026-7).
That they haue of dethe felte þe peynes smerte (p. 437, l. 10790).
French text missing.
Or tellen any of my peynes smerte (*Pity* 13).
And therfor, swete, rewe on my peynes smerte (*Complaint to his Lady*, 124).
T'abregge with thi bittre peynes smerte (*TC* iv, 426; also iv, 1141,
1501; v, 724, 1326, 1420; *CT* I[A], 2392; V[F], 974, 1259).

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[21] *NED, s.v.* pomely, indicates that the phrase was extremely common in the fifteenth century.

(40) What shuld I here sermone make? (p. 276, l. 7058).
What sholde I lenger sermon of it holde? (*TC* ii, 965).
What sholde I make of this a long sermoun? (*TC* ii, 1299).
What sholde I lenger sarmoun of it make? (*LGW* 2025).

(41) As thoughe his tayle had bene to brenne (p. 279, l. 7126).
Whan that his tayl shal brennen in the gleede (*CT* II[B], 111).[22]

(42) Through thick and thyn he (*a horse*) hyed hym faste (p. 279, l. 7127).
And forth with "wehee", thurgh thikke and thurgh thenne (*CT* I[A], 4066).[23]

(43) And þen she seide: "For Goddis love, haue mercy
On þi-self (p. 288, ll. 7323-4).
For love of God, as dooth youreselven grace (*CT* V[F], 458).

(44) This man hym-self hath foule shent (p. 291, l. 7397).
myn honeste,
That floureth yet, how foule I sholde it shende (*TC* iv, 1576-7).
And smale tytheres weren foule yshent (*CT* III[D], 1312).

(45) A dedely Eye on hir caste he (p. 294, l. 7443).
On hire he caste his hevy, dedly yen (*LGW* 885).

(46) Curtesy, fredam, and gentilnesse (p. 295, l. 7474).
Of gentillesse, of fredom, of beaute (*LGW*, 1010).

(47) She ganne so nye fall with hym in dotage (*love*) (p. 308, l. 7722).
Lest I myself falle eft in swich dotage (*marriage*) (*Bukton* 8).[24]

(48) Longe and brode, and bigge of bonys (p. 320, l. 7968).
Semely he is and bigge of bones (p. 460, l. 11591).
French text missing.
Ful byg he was of brawn, and eek of bones (*CT* I[A], 546).
And therto he was long and big of bones (*CT* I[A], 1424).

(49) In loves daunger ye are neuer a dele (p. 330, l. 8162).
Love in his daungere may so you clappe (p. 349, l. 8606).
That Love had caught in his danger (*Rom.* 1470).

(50) ye
In loves daunse caught may be (p. 330, ll. 8163-4).
That in þis daunce ye haue not bene (p. 349, l. 8604).
Now, thanked be God, he may gon in the daunce
Of hem that Love list febly for to avaunce (*TC* i, 517-8).
How ferforth be ye put in loves daunce (*TC* ii, 1106).
Of remedies of love she knew per chaunce,
For she koude of that art the olde daunce (*CT* I[A], 475-6).

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[22] It should be observed that the application in *Partonope* is to a horse, while that in Chaucer is to a damned soul.

[23] *NED, s.v.* thick and thin, gives Chaucer (first example) and two fifteenth century examples, but not *Partonope*.

[24] *NED, s.v.* dotage, gives *Partonope* as first example in sense of foolish affection, doting.

(51) In hym I trowe ye shall fynde no lak (p. 336, l. 8314).
And fond no lak, she thoughte he koude good (*TC* ii, 1178).
Milk and broun breed, in which she foond no lak (*CT* VII[B], 2844 [4034]).

(52) And þerto it (*sword*) was so bright and kene (p. 338, l. 8367).
A sheef of pecok arwes, bright and kene (*CT* I[A], 104).
A bowe he bar and arwes brighte and kene (*CT* I[A], 1966).
And in his hond a swerd ful bright and kene (*CT* I[A], 2876).

(53) Wrake þat was boþe curteise and hende (p. 339, l. 8389).
Trewe and siker, curteys and hend (*Rom.* 3345).

(54) Of all myn heale ye bere þe keye (p. 340, l. 8408).
Arcite hath born awey the keye
Of al my world (*Anel.* 323-4).
For she, that of his herte berth the keye (*TC* v, 460).
That bereth the keye of al myn hertes lyf (*LGW* 2298).

(55) Oute of theire slepe they breyde in haste (p. 343, l. 8476).
Anon this god of slepe abrayd
Out of hys slep (BD 192-3).
This Troilus gan of his slep t'abrayde (*TC* v, 520).
And for despit, out of his slep he breyde (*TC* v, 1243).
And gif that he out of his sleep abreyde (*CT* I[A], 4190).
And with the fal out of hir sleep she breyde (*CT* I[A], 4285).
This man out of his sleep for feere abrayde (*CT* VII[B], 3008 [4198]).

(56) Medame, lete all þes Iapes be (p. 349, l. 8590).
Sire olde lecchour, lat thy japes be (*CT* III[D], 242).

(57) As wisly God my soule save (p. 350, l. 8618).
Were me, as wisly God my soule save [(*Complaynt d'Amours*, 72)].
As wisly verray God my soule save (*TC* iii, 1501).

(58) And then he seide: "Sir, wele ouertake" (p. 389, l. 9428).
"Sire," quod this somnour, "hayl, and wel atake" (*CT* III[D], 1384).

(59) Lette se who shall þis game be-gynne (p. 416, l. 10028).
He seyde, "Syn I shal bigynne the game (*CT* I[A], 853).

(60) This game is be-gonne wele a-fyne (p. 417, l. 10058).
For trewely the game is wel bigonne (*CT* I[A], 3117).

(61) But weste so ferre was drawe þe sonne (p. 434, l. 10650).
French text missing.
I mot goon hom (the sonne draweth west) (*LGW* F 563).

(62) He hopeth yit to stonde in my grace (p. 436, l. 10737).
French text wanting.
In hope to stonden in his lady grace (*CT* I[A], 88; also *Rom.* 1169, 7184; *HF* 85; *TC* ii, 714; iii, 472; v, 171; *CT* I[A], 1173; IV[E], 2018; VIII[G], 1348).

(63) Turnyng and walowyng, carying faste (p. 452, l. 11310).
French text wanting.
He shall now walow and turne full ofte (p. 456, l. 11487).
French text wanting.
To bedde he goth, and walweth ther and torneth (*TC*, v, 211).
He walweth and he turneth to and fro (*CT* III[D], 1085).[25]

(64) He ought wele lyke me be reasone and skill (p. 474, l. 12002).
So that ye use, as skile is and reson (*CT* IV[E], 1678).
and withouten skile and resoun (*CT* VII[B], 1810 [3000]).

Proverbs and proverbial phrases are too much common property to be brought forward with impunity as evidences of direct borrowings by one author from another.[26] Nevertheless the sayings which are found in both Chaucer and *Partonope* can not be ignored, and I quote them with the warning that they must not be considered conclusive proof of endebtedness.

(1) That loued Menelaus as hys lyffe (p. 5, l. 156).
He loued here as hys owne lyffe (p. 14, l. 495).
Which that he lovede as hys lif (*HF* 176).
Ye, though he love hire as his owene life
TC v, 340; also *CT* I[A], 3222; V[F], 816, 1093; IX[H], 140).

(2) There ys songe but weleweye (p. 18, l. 635).
Hys songe was not but wellawaye (p. 249, l. 6497).
For which his song ful ofte is "weylaway" (*TC* iv, 1166).

(3) Hys herte wexe lyghte as leffe on lynde (p. 27, l. 990).
Be ay of chiere as light as leef on lynde (*CT* IV[E], 1211).

(4) And þus sho lyethe as stylle as a stonne (p. 41, l. 1525).
They were as stylle as eny stone (p. 100, l. 3091).
But still thei sitte as any stone (p. 464, l. 11705).
French text wanting.
And there he stod, as stille as stoon (*HF* 1605).
And set hire doun as stylle as any ston (*TC* ii, 600; also ii, 1494; iii, 699; iv, 354; v, 1729; *LGW* G 236 F 310; *CT* I[A], 3472; IV[E], 121, 1818; V[F], 171).
(5) By yowr power he settyth noghth an hawe (p. 107, l. 3244).
But al for noght, I sette noght an hawe
(*CT* III[D], 659; also *TC* iii, 854; iv, 1398).

(6) That hyt had ben as trewe as stylle (p. 168, l. 4605).
For riche Enowe he is and trew as staele (p. 462, l. 11647).
French text wanting.
That ladies in love be trewe as stele (p. 465, l. 11745).
French text wanting.

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[25] *NED*, *s.v.* wallow *v.*¹ 2, gives no example of wallow and turn between Chaucer and Palsgrave.

[26] On the proverbs in *Partonope*, see Whiting, "Proverbs in Certain Middle English Romances in Relation to their French Sources," *Harvard Studies and Notes in Philology and Literature*, XV (1933), 94-103. It is rather surprising that the author of *Partonope*, who was fond of proverbial lore, does offer more correspondences with Chaucer.

The wyse and worthi, secre, trewe as stel
(*PF* 395; also *Rom.* 5146; *TC* v, 831; *LGW* F 334; *CT* IV[E], 2426).

(7) There he renneth wode as any hare (p. 319, l. 7934).
For thogh this Somonour wood were as an hare (*CT* III[D], 1327).

(8) And lay as dede as any stone (p. 352, l. 8658).
Therewith he wax as ded as stoon (*BD* 1300; also Pity 16; *CT* [V], 474).

(9) Therfore þis is a full olde sawe:
Who may give to a lowere lawe? (p. 354, ll. 8709-10).
Wostow nat wel the olde clerkes sawe,
That "who shal yeve a lovere any lawe?" (*CT* I[A], 1163-4).

(10) Though ye sought hens into Ynde (p. 470, l. 11907).
Although he sought oon in-tyl Inde (*Rom.* 624).
For I ne kan nat fynde
A man, though that I walked into Ynde (*CT* VI[C], 721-2).

Finally, there are three passages in the romance where the circumstances rather than the words suggest that the author may well have had Chaucer in mind.[27] When Melior first comes to Partonope in bed and, after the conventional coyness, yields, she says:

Ryghte welcome be ye, my herte dere,
My hertes Ioy, myn erthely make (p. 47, ll. 1710-1).

These words certainly bring to mind Cressida's remarks in a very like situation:

Welcome, my knyght, my pees, my suffisaunce (*TC* iii, 1309).

Indeed, it seems probable that the description of the night at the house of Pandarus was in the romancer's memory when, at the very end of the poem, he pictures his hero and heroine properly married at last:

But lete us tell, when þe feste was do,
How þes hote lovers to chamber go,
And after how they ben brought to bedde,
And how þat nyght her lyfe they ledde,
And in what Ioy then they be.
But þis may not be declared for me,
Ne what her Ioy was, ne her delite,
For I was neuer yite in þat plite.
But in hye plesaunce I lete hem be,
And pray to God of love þat he
His seruaunte departe so of his grace,
That they may stonde in þe same case
In which faire Melior and her love hath be (p. 480, ll. 12182-94).

Of Troilus and Cressida Chaucer had written:

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[27] See also notes 15 and 19 above.

> Of hire delit, or joies oon the leeste,
> Were impossible to my wit to seye;
> But juggeth ye that han ben at the feste
> Of swich gladnesse, if that hem liste pleye!
> I kan namore, but thus thise ilke tweye,
> That nyght, bitwixen drede and sikernesse,
> Felten in love the grete worthynesse (iii, 1310-6).

Partonope meets an elderly knight, Gaudin le Blois, on the way to the tournament which is to determine Melior's husband. The two join forces and spend the night together. The French poem makes a matter-of-fact statement:

> Il n'ont pas hostel en maison,
> Ains l'ont en un bel pavellon (II, 96, ll. 7855-6).

In the English version the conditions are changed:

> They wolde not herborowe in house ne towne.
> Her men pyght vp a pavylone (p. 392, ll. 9494-5).

Perhaps it is stretching the point, but one is tempted to see here a reflction of that other knight errant, Sir Thopas, who would not sleep in a house while out on an adventure:

> And for he was a knyght auntrous,
> He nolde slepen in noon hous,
> But liggen in his hoode (*CT* VII[B], 909-11 [2099-2101].

For the sake of clarity it will probably be advisable to summarize the evidence of our quotations. If we take the first group, which contains what seem to me highly likely borrowings, we find a probable acquaintance on the part of the author of *Partonope* with the following works of Chaucer:[28] *Romaunt* (21 from Fragment A), *Book of the Duchess* (2), *House of Fame* (1), *Complaint to his Lady* (1), *Troilus and Cressida* (11), *Legend of Good Women* (5), *Prologue* to the *Canterbury Tales* (3), *Knight's Tale* (8), *Miller's Prologue* (2), *Man of Law's Tale* (1), *Wife of Bath's Prologue* (1), *Summoner's Tale* (1), *Clerk's Tale* (4), *Merchant's Tale* (2), *Squire's Tale* (1), *Franklin's Tale* (1), *Prioress's Tale* (1), *Sir Thopas* (1), *Parson's Prologue* (1). The list is impressive and is all, indeed a little more than all, we are justified in advancing with any degree of certainty.

Figures from the remaining groups, which may as well be joined for this purpose, are given only for what they seem to be worth: evidence that *Partonope* is filled with phrases and expressions which are also characteristic of Chaucer. Here we have Goddes foyson: *Romaunt* (15, 8 from Fragment A), *Book of the Duchess* (3), *House of Fame* (3), *Anelida* (2), *Parliament of Fowls* (1), *Troilus and Cressida* (50), *Legend of Good Women* (18), *Pity* (2), *Complaint to his Lady* (1), *Bukton* (1), [*Complaynt d'Amours*], (2), *Prologue* to the *Canterbury Tales* (14), *Knight's Tale* (12), *Miller's Prologue* (1), *Miller's Tale* (2), *Reeve's Prologue* (1), *Reeve's Tale* (4), *Man of Law's Introduction* (1), *Wife of Bath's Prologue* (8), *Wife of Bath's Tale* (3), *Friar's Tale* (3),

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[28] Numerals in parentheses give the number of references to the particular work. The figures are artifically increased by the fact that a number of passages in *Partonope* could have been suggested by more than one place in Chaucer's writings.

Clerk's Tale (2), *Envoy* to *Clerk's Tale* (1), *Merchant's Tale* (4), *Merchant's Epilogue* (1), *Squire's Tale* (1), *Franklin's Tale* (7), *Pardoner's Tale* (3), *Shipman's Tale* (1), *Prioress's Tale* (1), *Sir Thopas* (1), *Melibee* (1), *Monk's Tale* (3), *Nun's Priest's Tale* (4), *Second Nun's Tale* (1), *Manciple's Tale* (1). Such a catalogue as this is too inclusive to give any but the most general picture. The groups together, however, show us a man who knew Chaucer's poetry well and who gave it the most sincere praise of which he was capable, the praise of borrowing and imitation. While in a few instances, notably the tournament scene in the *Knight's Tale*, he would seem to have had a copy of Chaucer before him, there can be little doubt but that he ordinarily relied on his memory, and his verbal knowledge of Chaucer was sufficiently extensive and exact to give many professional students of Chaucer a feeling of embarassment.

The Doctrine of St. Gregory of Nyssa on Man as the Image of God

J. T. MUCKLE C.S.B.

I HAVE for some time been engaged in tracing the sources of the mystical doctrine of St. Bernard of Clairvaux. In the main, of course, St. Bernard is in the Augustinian tradition but in some points, notably in his teaching on man as the image of God, he departs from the interpretation of St. Augustine and makes the image of God in man consist principally in free-will. On other topics, I have found a parallelism between passages of St. Bernard and St. Gregory in thought, wording and method of treatment. It has been suggested to me that St. Bernard's doctrine on man as the image of God may also stem from St. Gregory.[1]

In this article, I attempt to set forth the doctrine on this question as found in those works of St. Gregory which are generally acknowledged as authentic. In a subsequent article I hope to express the doctrine on the same subject as found in St. Methodius and in the work *In Verba: Faciamus Hominem ad Imaginem et Similitudinem nostram*[2] which in some manuscripts is attributed to St. Gregory but which is generally considered by modern scholars not to have been composed by him. I shall also in my second article attempt to trace the sources of the doctrine of St. Bernard in the light of all these Greek sources.

In the works of St. Gregory we do not find expressly stated, of course, the distinctions of scholastic theologians between the *status naturae purae*, *status naturae integrae* and *status simpliciter supernaturalis*, and that between *dona praeternaturalia* and *dona supernaturalia*. He looks upon the creation of man as one act complete in itself. Man possesses his being and his endowments both natural and supernatural from his being made to the image and likeness of God. All alike go back to his creation. But he does say that some of the gifts from God to man are above nature: "We[3] men were once participants in this (supreme) Good which is above all power of comprehension . . . and to such an extent was that good in our nature which so surpasses all understanding that it seemed a second human good formed in the most accurate likeness according to the image of its prototype . . . All these (self-mastery and freedom from control by another i.e. *free-will*, freedom from the pain and business of life, living among the more divine things, beholding the good with a mind clear and freed from any veil) the account of the formation of the world intimates in a few words when it says that man was made to the image of God and dwelt in Paradise and lived on what was planted there."

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[1] Gregory of Nyssa is listed as a saint in the Roman Martyrology but there is no Mass in his honour in the Roman Missal and no Office in the Roman Breviary; he is not a Doctor of the Church.

[2] In accordance with custom, I list Greek works under Latin titles.

[3] *De Beatitudinibus* 3, PG 44, 1225D-1228A. Cf. *De Virginitate* 12, PG 46, 372C; *In Cantica Canticorum* 2, PG 44, 805C.

Throughout this article I have used the text of Migne. A critical edition of some of St. Gregory's works is under way. The latest report on it which I have seen is that given by Jean Daniélou, *Platonisme et Théologie mystique. Essai sur la Doctrine spirituelle de Saint Grégoire de Nysse* (Aubier, Paris, 1944), p. 12: L'édition entreprise sous la direction de M. Jaeger ne comprend que la première partie des ouvrages dogmatiques (Contre Eunomius, 2 vol., Berlin, 1921) et les Lettres (ed. Paschali, Berlin, 1925). M.P. Müller qui travaille avec M. Jaeger m'écrivait en 1937 qu'il préparait la seconde partie des ouvrages dogmatiques et ne savait pas encore s'il entreprendrait ensuite les sermons ou les écrits exégétiques. Une édition critique de la vie de Moïse avait été entreprise par Forbes. Mais elle n'a compris qu'un cahier qui contient seulement la première partie de l'ouvrage (the history), sans intérêt pour notre étude.

The translations of the texts cited are my own. While not giving a word for word rendering, I have adhered quite closely to the text and have striven to avoid giving an adaptation or mere paraphrase.

But St. Gregory does not enter into any discussion of the question whether these gifts were posteriorly granted even logically to the creation of man. Man comes from the creative hand of God made to His image, possessing his natural being and the qualities with which he is endowed as 'imitations' of the attributes of God. The term 'imitation' is vital for the expression and understanding of St. Gregory's thought. It does not connote the meaning which the English word, imitation, often conveys. It does not mean a counterfeit or anything to be passed on as the real article; neither does it mean the modelling of one's conduct in the moral sphere after the example set by another as it is used in the phrase, the imitation of Christ. It is used in the Platonic sense: a statue or a portrait is an imitation of the person represented in marble or on the canvas. For Plato a person imitates the Idea of goodness in so far as he is good. The term means in St. Gregory a copy, a replica, a reproduction, something made after a pattern; an imitation is like its prototype. All the goods with which man was endowed at his creation were in this sense imitations of the corresponding goods in God; they possess their own identities but are copies of the goods in God. With these few preliminary remarks we may venture on an exposition of St. Gregory's understanding of the term, image of God, as applied to man.

I. *ST. GREGORY'S NOTION OF THE IMAGE*

In the Septuagint version of *Genesis*, chapter one, verse twenty-six, we read: *Let us make man to our image and likeness*; the version of Aquila reads: *Let us make man in our image and according to our likeness*; that of Symmachus is: *Let us make man as our image according to our likeness*; that of Theodotion: *Let us make man in our image as in our likeness.*[4] The Septuagint text of this verse is the only one of the four to use the terms image and likeness as though they referred to two distinct things; the other three relate the two terms implying that the likeness is in the image, that the image is an image because it bears a likeness. In these three versions, especially in the last two, the figure of hendiadys is employed; one thing is signified through two words. The meaning then would be, the likeness of an image.

It can be assumed, I take it, that St. Gregory of Nyssa who certainly knew his Origen was familiar with all these versions. Be that as it may, one fact stands out clearly in his exposition of this text, *viz.* that while he quotes the text repeatedly as it is found in the Septuagint, his explanation of it conforms to the readings of the other versions. He does not make a distinction between image and likeness as two different things; they express one notion. The likeness is in the image, an image is like its archetype; image and likeness together mean the likeness in or of an image. Just as a statue or portrait, if it be a good one, is like the person portrayed, so man as the image of God is like God; he imitates, reproduces, is a replica of the attributes of God.

In his work, *De Hominis Opificio*, written, as he tells us in the Introduction addressed to his brother, St. Peter, to supplement St. Basil's *Hexameron*, we read that God created man last and placed him on earth as in a house all prepared for him that he might behold some of the wonders above and about him and be lord and master; all this that he might come to know God as the author of the things he was to enjoy; and from the beauty and the majesty of the universe he might know the power of the maker: "When,[5] therefore, the maker of all had made ready beforehand, as it were, a royal abode for him who was to be king, . . . He then made man to appear in the world to be the spectator of some of its wonders and the lord of others, to have through enjoyment knowledge of the Giver, and through the beauty and greatness of what he saw to be able to trace back the power of the Maker which is unutterable and beyond expression."

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[4] Origen, *Hexapla*, PG 15, 156-158. The Hebrew text of the *Hexapla* corresponds to that of the Aquila version.

And since man was to rule and use some things of earth and to rise to a knowledge of God by viewing its wonders, He gives man a twofold nature, blending the divine and the earthly that he may be equipped to enjoy each, to enjoy God through his spiritual nature and the goods of the earth by the senses which are akin to them: "God[6] brought in man giving him as his work not to get what is not at hand but to enjoy what was before him. For this reason He establishes in him the impulses of a twofold formation mingling the divine with the earthy that he may in a manner germane and proper to him enjoy both, God through his more divine nature and earthly goods through his sense-life which is akin to them."

God placed man midway between the sensible and intelligible in order to establish an inner harmony in creation, whereby a lower order is joined to the next higher order. Below man we find inanimate nature, next things endowed with vegetable life, next those with sensible life; each of the latter two embraces and includes the nature of the order immediately below it. Man made of dust but possessing a soul with both vegetative and sense powers gathers up in himself all the lower orders of creation. And by his intelligible nature he is to reach up to the divine.[7]

Man is lord and head of all creation below him and is destined to reach God and enjoy Him by contemplation proceeding from and based on a virtuous life. And it is in view of each of these two functions of man that he was made to the image of God. As ruler of the worldly creation man was invested with power, he was made *sui juris* dependent on no one, in command of himself with authority to command obedience. After the angels had been created and assigned each its office, "there[8] was a certain power also which was appointed to maintain and govern the region of earth, equipped for this task by the Power which regulates the universe. Then there was formed that figure moulded of earth a copy (apeikonisma) of the supernal Power. This living being is man. In him was blended the god-like beauty of the intelligible nature with a certain ineffable power." Man who was to be ruler of the universe was made a king from the first both by superior gifts of the soul and by his erect stature of body. St. Gregory uses a comparison to illustrate these higher gifts of the soul. It is not clear whether he means to make his point from the analogy of an artist painting a portrait of a king, or of a sculptor who forms a statue and paints on the vesture and by retouching brings the features out in relief. It is probably the former, though it does not matter which it is so far as its value as a comparison goes. To be a true king according to him, one must be ruler of oneself, autocratic in the etymological sense of the term, beholden to no one, that is, endowed with free-will as all men are. But further that the portrait be recognized as that of a king, the figure must wear a crown, be vested in royal purple and hold a sceptre. Man was invested with his royal character by being made in the likeness of the image of God not only by the endowment of free will; for a purple robe he is clothed in virtue; his sceptre is the gift of immortality and his crown that of justice. Such an image is perfectly like the Divine King, the archetype in all that pertains to the royal dignity: "The[9] soul shows its royal and exalted dignity by its being without a master and *sui juris* living independently by acts of its own will. For to whom else does this belong if not to a king? And further, the fact that man was made the image of the Power which governs all things means nothing else than that his nature was fashioned a royal nature from the start; just as is found among men, those who form images of rulers both express the figure of their form and indicate the royal dignity by drawing a royal robe on it; and the image is called king; so also with human nature, when it was formed to rule over other (creatures), through its likeness to the king of the universe it was established, as it were, a living image sharing with its archetype both its dignity and its name . . . instead of the purple robe, it is vested with virtue the most royal of all vestures, instead of a sceptre, it supports itself on the blessedness of immortality, instead of the royal diadem, it is adorned with the crown of justice so that in everything within the dignity of royalty it appears the perfect likeness of the archetypal splendour (kallos)."

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[5] *De Hominis Opificio* 2, PG 44, 132D-133A. It is not within the purpose of this article to trace the sources of St. Gregory's doctrines or to show the relation of his thought to that of his predecessors, Pagan or Christian. I am attempting only to set forth his doctrine on man as the image of God just as it is found in his works.

The philosophical sources of St. Gregory are given by quotations from the Greek texts of the authors in question by H. F. Cherniss, *The Platonism of Gregory of Nyssa* (University of California Publications in Classical Philology, Berkeley, Calif., 1935, Vol. XI) PP. 1-92. Cherniss' position is that Gregory did not succeed in Christianizing Platonism. They are also fully noted and studied by Jean Daniélou, *op. cit.* (see note 2). Daniélou argues, not too conclusively at times it seems to me, that St. Gregory, except for some *atavismes d'expression,* transformed and Christianized his borrowings especially those from Plato and Plotinus. Endre v. Ivanka also discusses the Platonism of St. Gregory in *Vom Platonismus zur Theorie der Mystik* in *Scholastik* 11, 1936, pp. 163-195). His position is much the same as that of Daniélou except that he admits some evolution in St. Gregory's thought from his earlier to his later works.

[6] *Op. cit.* PG 44, 133B.

[7] *Oratio Catechetica* 6, PG 45, 25B-28A. Cf. *De Hominis Opificio* 8, PG 44, 144D-148C.

[8] *Op. cit.*, 28B; cf. *In Cantica Canticorum* 12, PG 44, 1017C.

"Again,[10] just as painters portray human forms by means of colours through tints and shades and lines, so also our Maker with repeated strokes of the brush, as it were, painting in the image according to his own beauty with investiture of the virtues, showed in us the prerogative of ruler. Manifold and varied are the colours of the image through which the true form is depicted . . . purity, freedom from passion, blessedness, departure from all evil and all such like through which the likeness to the divinity is expressed in men. With such flowers did the Maker of His own image mark our nature. And if you examine the other points through which the divine beauty is expressed you will find also with reference to them the likeness in the image in us is accurately preserved. The Deity is Mind and Word; for *in the beginning was the Word*, and the Prophets according to Paul have the mind of Christ who speaks in them: and man is not removed from these (gifts). For you see in yourself the word (logos) and reason, an imitation of the real *Mind* and *Word*. Again God is Love and the source of Love. This also the Maker of our nature made our character (Prosôpon) . . . If this (charity) be lacking, the whole imprint (charactêr) of the image is transformed."

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[9] *De Hominis Opificio* 4, PG 44, 136B-D. It will become clear as we go along that the term nature (*phusis*) does not mean the same for St. Gregory as it does for us. With him, nature signifies all that belonged to man when human nature was first created, not only his intellectual life, but also the prerogative of immortality, and all the other imitations of the Divine Attributes which God furnished to him in the image. But it does not for St. Gregory include the non-rational powers of man's being, nor the passions and sensible appetites. These were added to man, but not as included in the image, when the individual man Adam was created and were given to him in view of his foreseen mortal existence. In other words for St. Gregory nature means the rational soul and the prerogatives and grace given man from the beginning of his creation; the term does not include the sense and vegetable powers.

[10] *Op. cit.* 5, PG 44, 137A-C. Cf. also *In Cantica Canticorum* 15, PG 44, 1093CD. It might be well to say in the beginning that the English word purity does not adequately convey the meaning of the Greek word katharotês, as expressed by St. Gregory in his later works. As an attribute of God it means the absence of all evil or tendency to evil: God is sheer goodness; in this sense "The Divine Nature is purity" (*De Oratione Dominica*, PG 44, 1140C). In man it is the imitation of the attribute found in God. It means the state or condition of the image which results from catharsis, the state of the soul cleansed from all the accretion, the relics of sin, from had habits, ill-regulated passions and tendencies, in a word from all that is not holy or which does not promote holiness. St. Gregory says that the purity of a sanctified soul is the same by nature as that in Christ; but He is its source, while it flows from Him to us (*De Perfecta Christiani Forma*, PG 46, 284D). Cf. PG 44, 800C, 1096C, 1272A. Likewise apatheia in St. Gregory's sense has no English equivalent. In man's image it too is an imitation of a Divine Attribute. In God there is no passion or *affectio*. In man the passions with their appetites and tendencies are a part of man's being in virtue of his human nature, but they are not in the image in man. They are not evil but ill-regulated as a result of the Fall and of man's vicious habits which he may have formed. Apatheia does not consist in being free from the passions for they are part of man's being, but in turning them to the service of virtue. The term then means in man not freedom regulation so that they do not mar the from passions in the absolute sense but their image but are made the instruments of virtue. Cf. PG 44, 241D, 657A, 697B, 945A,

I have quoted these two passages quite at length. For while they help us to grasp St. Gregory's notion of the image in man, they also present two problems: the first is that the phrase 'the putting on, (addition, epibolê) of the virtues' which I have rendered above by 'investiture of the virtues' has been used by some scholars[11] to support their thesis that by image St. Gregory means the natural gifts and by likeness the supernatural gifts conferred on man. The second is that the image of God in man coming to him in his creation reaches its perfection only in the Christian who embraces the example and doctrine of Christ. This latter point I shall briefly consider later on in this article. Let us return to the first.

In accordance with the dictum of Horace, it is risky to press a comparison too far. St. Gregory does not seem to have worked out his illustration too well in his own mind. With him freedom of choice, free-will, whereby a man is subject to no master, is *sui juris*, free from coercion or necessity, is a basic gift in man as the lord of the universe. Now this endowment cannot be represented in marble or on the canvas but royal supremacy and sovereignty are usually signified in art by the crown and sceptre. But instead of making them the symbols of authority, Gregory in his illustration makes them represent justice and immortality respectively. But his figure does prove that in his mind man is not king unless endowed with virtue and justice and immortality and that these were given man at his creation. As the statue or portrait is not finished, is not that of a king, until these are represented, so it is not until then the image of a king. There is no point in emphasizing that he says that the virtues of purity, self-control etc. are the means whereby the divine likeness is formed in man, as distinct from image, for he immediately adds: "With such flowers did the Maker of His own image mark our nature." And just below he says that without love the whole character of the image is transformed, and by love he certainly means the supernatural virtue of charity for he quotes St. John: *Love is from God* and *God is love*. As has been said above, St. Gregory does not distinguish between image and likeness as two distinct things. With him the image is an image because it is like its original. He uses the terms almost interchangeably, sometimes using 'image' alone, again 'likeness'

1200C ff., 1233BC; PG 46, 57C, 348A. Katharotês denotes the freedom from all affection for things not of God; in this sense he speaks of man's purity being that of the angels. Apatheia means freedom from any ill-regulated movements of the passions. St. Gregory's notion of purity accounts for his strong contrast of the married state to that of virginity in his *De Virginitate*.

[11] Notably, Fr. Hilt in *Des hl. Gregor von Nyssa Lehre vom Menschen systematisch dargestellt* (Köln, 1890) pp. 74 ff. The chief passages he uses to prove his thesis are taken from the spurious treatise *In Verba: Faciamus Hominem etc.* Franz Diekamp in his *Die Gotteslehre des hl. Gregor von Nyssa* (Münster, 1896) makes a brief reply to Hilt's interpretation. See pages 70-73.

alone, at other times he uses the phrase 'the likeness in the image' as in the last passage quoted. It will become more and more clear, as we go along and quote texts from his works, that he makes no such distinction as that put forward by some *viz.* that image refers to the natural and likeness to the supernatural gifts.

Through the image which man possessed from his creation, he bears a likeness in all things to the archetype: "The[12] first formation of man bears witness that our nature was made after the image and likeness of God; surely because being made after the image he possessed in all things the likeness to the archetype." This likeness to the divine is not our own work originally but a sheer gift of God at our creation: "For[13] this likeness to the divinity is not our work neither is it the achievement of human power but it is from the munificence of God who straightway at the time of our first formation favoured our nature with the likeness to Himself." That man was made to the image of God means that he is, so to speak, a living likeness of the transcendent divine power: (The inspired Word) "testifies[14] that this creature (man) was made by his Maker a living likeness, as it were, of the divine and transcendent power; it might be better to give the text itself which reads: *And God made man; according to the image of God He made him.*" In this passage St. Gregory clearly calls man the image of God because he is His likeness.

As has been said, man has a twofold function, to be lord of earthly creation, and to know and enjoy God; and it is to fit him for each purpose that he was made to the image of God. We have already seen how God equipped man so as to make him king of the lower creatures. When he comes to show how, by possessing the image of God, man is equipped to enjoy Him, St. Gregory goes into greater detail in enumerating the goods which man possesses by his image. Using the principle that only like knows like, he attributes to man *mutatis mutandis* all the attributes and virtues found in God. Again he has recourse to a comparison. He takes the example of sight basing his explanation on the old theory that it is because the eye possesses light in itself that it is able to view light. And so for man to know and enjoy the attributes and virtues of God, he must possess them in himself: "If[15] then man is brought into being to be participator in the divine goods, he must of necessity be formed in such a way as to be equipped to share in those goods. Just as the eye by the brightness implanted in it by nature enters into communion with light attracting what is akin to it through its cognate power, so it was necessary that there be something mingled with man's nature akin to the divine that through the correspondence it might have the urge to what is proper to it." Just as irrational creatures have bodies fitted for their destined habitation, "so also man made for the enjoyment of the divine goods had to have something in his nature akin to that in which he was to share. Wherefore he was endowed with life and reason and wisdom and all the goods befitting God that by each of them he might have a desire for what is germane to him . . . In the likeness which is according to the image, there is a complete enumeration of what characterizes the divinity." This likeness to God extends to all His attributes without exception: "Man[16] was made like to God in all things." His likeness to the archetype is complete.[17] Again, all intelligible natures, both angels and men, were created to know, gaze upon and glorify God. To look upon God is the nourishment of the soul the same as material food is for the material body. But the partaker must be somewhat akin to what is to be partaken of: "Just[18] as the eye comes to enjoy the light from its having in itself natural light for the perception of what is akin to it . . . so it is absolutely necessary for participating in God that there be in the nature of the being which enjoys the participation something akin to what is participated. For this reason the Scripture says that man was made after the image of God that, as I think, like may see like. To look upon God is the life of the soul."

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[12] *In Cantica Canticorum* 15, PG 44, 1100D. Cf. *De Hominis Opificio* 16, PG 44, 184AB.

[13] *De Virginitate* 12, PG 46, 372C. Cf. *De Beatitudinibus* 3, PG 44, 1225D-1228A.

[14] *De Infantibus etc.*, PG 46, 172D. Cf. *In Cantica Canticorum* 8, PG 44, 945A, 976B, 1093D, 1225D, 1228A-D.

[15] *Oratio Catechetica* 5, PG 45, 21C-24A.

[16] *Loc. cit.* 24D.

[17] Cf. *In Cantica Canticorum* 15, PG 44, 1100D.

Since man was made to know, to look upon God in all His attributes and points of excellence, and as only like knows like, it follows in St. Gregory's mind that man's being made to the image of God means that he possesses in his own measure and capacity all these attributes and goods: "Man[19] was likened to God in all things"; "In[20] the likeness which is according to the image there is a complete enumeration of what characterizes the divinity"; that being made according to the image, man has a complete likeness to the archetype in all things. Man in becoming virtuous draws forth from within his own nature the virtues which were implanted there by his Maker but which have been covered with the accretion of evil; his kingdom of God is within him: "He[21] who made man to His image placed in the nature of his product the resources (aphormas) of all goods so that none of these goods come to us from without but what we will is in our power as we draw forth the good from our nature as from a treasury." To comprehend God in His essence is beyond the power of the human mind but "there[22] is within your grasp and power a measure of contemplation of God. He who formed you straightway put into the essence of your nature such a good; God has impressed in your formation the imitations of the goods of His own nature as the sculptor moulds a figure in wax." God created man out of His goodness and equipped man with all His own goods: "For[23] no other reason did God create man than because of His own goodness . . . Therefore, entering upon the creation of man He would not show a half-perfect power of His goodness, giving man only some of His goods and begrudging him a share in others; but the perfect form of His goodness is in this that He brought man from non-being into being and perfected him with no lack of His goods; they are so many that one could hardly list them." Man possesses by his image all the goods in God; if even one of them were lacking, the image would be imperfect: "As[24] long as the image lacks none of the goods conceived to be in the archetype, it is preeminently an image; but in whatever point it fails in its likeness to the prototype, in that point it is not an image."

But while man possesses each and every excellence which is in God, it does not mean that the goods possessed by man in virtue of his image are identically the same as those in God. Man's goods have their own identity. They are created and subject to change; they exist in man according to his capacity to receive them; in God they are infinite, in man finite: "For[25] that which is made according to the image has in every respect an utter likeness to the archetype, intellectual of intellectual, and incorporeal of incorporeal, free from any bodily bulk as the archetype, and like it evading measurement, yet in its own proper nature it is something else than the latter. For it would no longer be an image if it were identically the same in all respects as the other. But in those respects in which the archetype is disclosed in the uncreated nature, in the same respects does the created manifest the image . . . Just as in a small piece of glass the whole sun is reflected not in its proper size but according to the capacity of the small mirror, so within the narrow limits of our nature do the images of those ineffable properties of the Deity shine forth."

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[18] *De Infantibus etc.*, PG 46, 173C-176A.

[19] *Oratio Catechetica* 5, PG 45, 24D.

[20] *Loc. cit.* 24A. Cf. *De Anima et Resurrectione*, PG 46, 89C.

[21] *De Beatitudinibus* 5, PG 44, 1253D-1256A.

[22] *Op. cit.* 6, PG 44, 1269D-1272A.

[23] *De Hominis Opificio* 16, PG 44, 184A. Cf. *Oratio Catechetica* 5, 23, PG 45, 24A, 61A.

[24] *Op. cit.* 11, PG 44, 156B.

[25] *De Anima et Resurrectione*, PG 46, 41C.

Man's greatness consists not in his likeness to the lower order of creation but in his being in the image of his Creator; and man in virtue of being made the image of God possesses according to his capacity each and every excellence, attribute and virtue found in God. How then, asks Gregory, explain the limitations of man, he is corporeal, temporal, mutable, subject to passion? These limitations are in man but they are not in God. He admits this is a difficult question.[26] But he holds fast to the proposition that not only all the excellences found in God are in man, but also that there is no true excellence taken by itself in man which is not in God. He rejects the figure of Plato's chariot[27] and Aristotle's definition of the soul and adopts, he says, the inspired Scripture as reason's guide "which lays it down that we are to consider that there is no excellence (exaireton) of the soul which is not proper to the divine nature." This gets him into difficulties. For he insists on the unity[28] of the soul, and if only the excellences which are found in God are to be attributed to man, how are we to exclude the faculties of sense and growth and the passions in man from the image and still keep to the unity of man's soul? He tries in the *De Anima et Resurrectione*[29] to solve the difficulty by saying that a definition notes the specific differences, that man has these powers in common with the brute and so they do not have to enter into the definition of man as man; these powers and conditions belong to the soul only in view of the fact foreseen by God that the soul was to dwell in a material body; that because we say in a definition that one thing is in the soul, we do not thereby say that another is not. St. Gregory considers that only the rational soul, the ruling principle, is strictly speaking of the essence of the soul, and that while it is in the body it acts through the body and is dependent on the sense life for its knowledge of the external world, yet the non-rational appetites and the senses are but operations of the soul through bodily organism. "Just[30] as the perfection of the soul is in its intelligence and reason (noeron and logikon), everything which is not that, though it can share the name in common with the soul, is not really soul but is a certain vital energy, included by extension in the appellation of soul."

St. Gregory indulges boldly in Platonic realism and recognizes two stages in the formation of Adam. God first created universal man made to His own image. This universal man embraced present man's rational nature. It was made up of body and soul though St. Gregory does not go into detail regarding the qualities of its body except to say that it was neither male nor female. Then, foreseeing man's wrong choice through free-will, God formed Adam bearing the same image but his soul and body were equipped with appetites and powers and organs to enable him to live as a rational being in a material body; not only Adam but every individual to the end of time possesses this image which was implanted in universal man. It was in universal man that the image of

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[26] *De Hominis Opificio* 16, PG 44, 180BC. Cf. also 124A ff.

[27] *De Anima et Resurrectione*, PG 46, 49C-52A. St. Gregory gives as his own definition of the soul: The soul is a created, living, and intellectual substance (ousia) imparting by itself to a body organic and capable of sense perception a living force and a power of perceiving the sensibles so long as its nature can receive such powers. *De Anima et Resurrectione*, PG 46, 29B. H. F. Cherniss, *op. cit.*, on pages 14 ff. shows that St. Gregory in other passages makes varying use of Plato's figure.

[28] *De Hominis Opificio* 14, PG 44, 176AB.

[29] PG 46, 52A-53B. In several other texts, St. Gregory considers the problem through use of the Plato myth but nowhere gives a very satisfactory answer. Cf. Cherniss, *op. cit.*, pp. 14 ff.

[30] *De Hominis Opificio* 16, PG 44, 176D-177A.

God was first formed and this image consisted in the rational ruling principle in him: "When[31] the Scripture says that God made man, by the indefinite annotation it signifies mankind (to anthrôpinon). For the (proper) name Adam was not then given to the being created, as the narrative relates in what follows; but a name[32] was given to man created not as to an individual but as to universal man. Therefore by the universal appellation of the nature we are brought to make such a conjecture as the following: that by the foreknowledge and power of God all humanity is included in the first formation . . . Just as the individual man has a finite bodily magnitude, and possesses a measurable substance which is commensurate with his bodily appearance, exactly so, I think, in one body, by the power of God foreseeing all things, the whole fullness of humanity was included and this is what the Scripture teaches when it says that *God made man* and *after the image of God He made him.* For the image is not in part of human nature nor is it a grace peculiar to any individual taken by himself; but such a faculty pertains equally to the whole human race. A proof of this is that mind is established in all alike . . ."

The non-rational activities and passions pertaining to soul because of the union of the soul with a material body are not evil. But they are not goods or excellences which find their counterpart in God. They share in the image of God in man only indirectly and mediately in so far as they are ordered by reason. They contribute to the practice of virtue when under the control of reason but make a man evil and obscure the splendour of the image if they get the upper hand, and make reason, from master, become their servant. According to the use made of them by man's will they become the instruments of virtue or of vice;[33] "Whatever[34] qualities are on the border line of the soul tending by their own nature to either of two opposites whose use for good or the opposite determines the outcome, such as anger or fear or any such movement in the soul without which you cannot conceive human nature, all these we consider are produced from without since no such characteristics can be conceived to be in the archetypal beauty."

The soul then in virtue of its being made to the image of God possesses imitations of all the excellences in God and only those found in the divine nature. In general, St. Gregory says that through the likeness in the image the beauty and goodness of God are reproduced by imitation in the soul. In all points in which the divine beauty is expressed, "you[35] will find that in them the likeness in the image which we show is perfectly observed." Likewise of the goodness of God (i.e. the goods in God), "We were once participants and to such an extent that it appeared a second good proper to man."[36] St. Gregory nowhere attempts to give an exhaustive list of these goods but says that the list would be too long. He does however in several passages list particular virtues which are in the image. Generally speaking he mentions the particular virtues which help to elucidate the point he is trying to make at the time. This is especially true in his *Homilies on the Canticle of Canticles* which taken together with the *Discourses on the Beatitudes* and the *Life of Moses* form the most complete exposition of the mystical life found in all the extant works of the early Greek Fathers of the Church. Let us consider briefly some of the prerogatives, powers and virtues possessed by the soul in virtue of its being made to the image of God.

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[31] *Op. cit.*, 185B. Cf. *Contra Eunomium* III, PG 45, 592C: He who established the universe made human nature from the beginning and after Adam was formed he then appointed for men the law of generation from one another saying: *Increase and multiply.*

[32] In another passage in this work (204D), St. Gregory says that Adam according to Hebrew scholars means an earthy creature. As a common noun it means man in Hebrew.

[33] *De Anima et Resurrectione*, PG 46, 57C ff. Cf. also 61A, 120D; *De Beatitudinibus* 4, PG 44, 1233BC; *De Virginitate* 4, PG 46, 348A; *Oratio Catechetica* 15, PG 45, 49A.

[34] *Op. cit.*, 57C. Cf. *In Hexaemeron*, PG 44, 82B; *De Mortuis* 46, 524D.

[35] *Oratio Catechetica* 5, PG 45, 21D.

[36] *De Beatitudinibus* 3, PG 44, 1225D.

II. *THE CONTENT OF THE IMAGE*

(a) *Immortality*

The soul was made to the image and likeness of God; its being is then like God's being. It has life and, like God, immortal life. That man was made immortal St. Gregory proves by having recourse to his principle that if man is the true image of God, he must possess in his own measure each and every excellence found in God: "Since[37] one of these goods which are proper to the divine nature is eternity, it was altogether necessary that the constitution of our nature be not without its share in this too but possess within it the note of immortality that through its innate power it might come to know the supreme being and desire the divine eternity." And this prerogative belongs to him in virtue of his being God's image. Immortality is in man from the beginning; he possesses it as he comes from the creating hand of God: "Now[38] of all things which were very beautiful one was man; or rather, man was adorned with a beauty above that of beautiful things. For what else is so beautiful as the likeness of the sheer beauty. But if all things were very beautiful and among all things man was preeminent, death was not at all in man; for he would not be a thing of beauty if he bore within him the sorry mark of the dejection of death; but, being the copy and likeness of the eternal life, he was truly and exceedingly beautiful adorned with the gladdening mark of life." Death took hold of human nature as a result of the sin of disobedience: "And[39] so after man had withdrawn himself from the fruit of the fullness of goods and filled himself with the death-bearing fruit through disobedience . . . he exchanged the more divine for the irrational and brutish life, and once death mingled with our nature, mortality reached through to the succeeding generations of those born. Wherefore a living death took hold of us, our life in a sense died, for it is quite dead deprived as it is of immortality." Death becomes an instrument in the purgation of man. As a result of sin, God clothed human nature in the 'dead skins of animals' that is in mortality which is derived from the nature of irrational animals and which enfolds the outward but not the inward part of man's nature, touching the sentient side of his nature but not laying hold of the divine image itself. Death does not dissolve the image but only the corporeal, sentient part of man. And justly so; for it was through the senses that man went astray. The sentient element in man's nature, that is the bodily part, dissolves in death and at the resurrection is remoulded to its original beauty. Man's sentient faculties working through the senses become the instruments of sin and so man's sentient life dies with the body: "Therefore[40] by an economy, from the nature of irrational animals, mortality was added to our nature made for immortality. This mortality enfolds it from without but not within, and it takes hold of the sentient part of man but does not touch the divine image." Man's fallen nature resembles a vessel into which there has been treacherously poured molten lead which hardens. The owner claims the vessel but it is filled with the hardened lead. He breaks the vessel into pieces and remoulds it in its former shape free from the material which was poured into it: "in[41] like manner, the fashioner of our vessel, after vice had been mingled with the sentient part of it, I mean the part pertaining to the body, dissolves the material which had received the evil and through the resurrection remakes the vase not mingled with its contrary and by a reintegration restores it to the beauty it had from the beginning."

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[37] *Oratio Catechetica* 5, PG 45, 21D. Cf. 24D.

[38] *In Cantica Canticorum* 12, PG 44, 1020C.

[39] *In Cantica Canticorum* 12, PG 44, 1021CD.

[40] *Oratio Catechetica* 8, PG 45, 33CD.

St. Gregory expresses the same thought by using the example of a plant whose abundant foliage dries up and falls to the ground once the root becomes diseased: "Just[42] as in the beginning, human nature had bloomed as long as it was in Paradise, increasing and flourishing by water from the fountain there when for foliage there was the shoot of immortality adorning its nature, but when the winter of disobedience dried up the root of immortality its flower fell to the ground and dissolved and man was bereft of the beauty of immortality and the herb of virtues dried up and the charity of God became cold through abundance of unrighteousness"; and changing the figure still more he goes on: "and as a result various passions were increased in intensity by opposing winds through which shipwrecks of souls occur." Immortality is a prerogative of man's nature through his being made to the image of God; as we have seen above, man was to be the lord of earthly creation and so by his likeness to the Supreme King he was made a living image of the archetype; his sceptre is the blessing of immortality.[43] Man is to enjoy all the goods in God; and to know them he must have something akin to each of them in himself as only like knows like. One of the goods in God is eternity; it was necessary then that "the[44] formation of our nature should not be without a share in this too but have in itself immortality . . . These (truths) the account of the origin of the world makes clear by the comprehensive expression of one phrase: that man was made to the image of God." But God not only endowed man with immortality, but shared with him so to speak His divine principle, His mind.

(b) *Man's Mind*

Man is the image of God in his rational nature. He possesses reason and can formulate the concepts of that reason by the internal word and can express them and convey them to others by means of the spoken word. This latter is effected by the mind working through the vocal organs. Just as the divine mind pervades by its power the whole universe and regulates all in harmonious motion and order, so does the human mind with relation to the body. And just as we can deduce the existence of a transcendent mind from the regulation and government of the universe, so can we from the constitution, operations and harmonious order of man reach knowledge of the existence of a mind in each individual man.[45] Man shares mind with God, but man's mind has its own identity subject to the limitations of a created thing: "The[46] Maker has given a certain God-like grace to our constitution implanting the likeness of His goods in His image. Wherefore while out of His bounty He gave the other goods to human nature, yet He did not properly speaking give but shared mind and intelligence (nous and phronêsis) investing His image with the adornment proper to His own nature." Yet our mind while partaking of the qualities of the divine mind is not identical with the prototype, otherwise it would no longer be an image. For Scripture tells us that it is an image of the divine mind and not identical with it but like it. It is like the divine mind in that it is intellectual, incorporeal, above weight and measurement, yet it has its own proper nature and imitates the divine mind according to its capacity and limitations, as a small mirror reflects the whole sun but only in miniature.[47] Man's mind not only regulates and governs the body but through sense perception it gains knowledge of the external world; and it is capable of reasoning and of arriving according to its measure at a knowledge and understanding of the supra-sensible. Man was created to enjoy God through knowledge and love, and by his rational power man established in virtue can come to know not the essence but the attributes of God and in the moral sphere distinguish between real and apparent goods. But since the mind of man is an image of the incomprehensible mind of God, in the point of this incomprehensibility it is also like its archetype; so that we cannot fathom the depths of our own mind.[48] But it is free-will, the power of free choice, which St. Gregory especially emphasizes as the good which man possesses in virtue of his being the image of God whereby he can choose the true good against the apparent good.

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[41] *Loc. cit.*, 36AB. Cf. 33B, 36B, 545BC.

[42] *In Cantica Canticorum* 5, PG 44, 869CD.

[43] *De Hominis Opificio* 5, PG 44, 136D.

[44] *Oratio Catechetica* 5, PG 45, 21D.

[45] Cf. *De Anima et Resurrectione*, PG 46, 28 ff.

[46] *De Hominis Opificio* 9, PG 44, 149B.

(c) *Free-Will*

Man's reason distinguishes the true from the apparent good but it is man's will which decides which one he will embrace. Man determines his lot and reaches perfection in this life through this power to choose, to will, what is good and to strive to attain to it.

He has the power to choose between virtue and vice, between the things of the spirit and the things of earth and by his choice he advances in virtue and recovers his original likeness to God or becomes vicious and assumes the likeness and becomes the image of Satan. St. Gregory wrote before the rise of the Pelagian heresy; he is not at pains to establish man's dependence on God's grace but against the fatalists tries to show that man is in the moral sphere his own progenitor, that he forms and determines his own future. He therefore emphasizes the power of man freely to choose right or wrong rather than his dependence on the grace of God. The statement made by St. Augustine for understanding the position of St. John Chrysostom on a similar question could be applied also to St. Gregory: "*quia*[49] *disputans in Catholica Ecclesia non se aliter intelligi arbitraretur, tali quaestione nullius pulsabatur, vobis nondum litigantibus securius loquebatur.*"

St. Gregory does, however, teach that prayer on our part and God's help are necessary for man to live virtuously; man's inclination to evil is so strong since the fall that he needs aid from God to turn to good: Why do we pray that the good purpose may be in us from God? Because human nature is weak with respect to good, once it has been weakened by evil; for man does not turn with the same facility from evil to good as from good to evil, just as a man whose constitution has received a shock from some sickness easily becomes sick again. There is no need of help from anyone to seek evil and vice but if the inclination (*hropê*) is to become better, there is need of God to bring the desire into effect. Wherefore we say: Your Will is temperance, but I am carnal sold under sin; by Your Power may this good Will be established in me.[50]

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[47] Cf. *De Anima et Resurrectione*, PG 46, 41CD.

[48] Cf. *loc. cit.* and *Oratio Catechetica* 21, PG 45, 60B; *De Hominis Opificio* 10, 11, PG 44, 152D ff.

[49] *Contra Julianum* I, 22, PL 44, 656.

[50] *De Oratione Dominicana* 4, PG 44, 1164D-1165A.

Virginity which for St. Gregory means not only chaste virginity but detachment of all the affections of the soul from things below can be attained, only with the help of God's grace.[illegible] "It" [illegible] the [illegible] of those alone whose [illegible] grace of God [illegible] towards [illegible] and "grace is a gift of God."

The power of the Holy Ghost in comparison to the power of the Church as a whole, directs and assists those striving for the perfection of the contemplative state. "The road to perfection is like a voyage at sea. The ship is the Church, man himself is the rudder, but the Holy Ghost it is Who, as the [illegible] of the whole Church, blows on us with his winds and should any others [illegible] [illegible] it no great obstacle in our course?" I shall return to this question in St. Gregory later on in this article when I come to speak of his mystical doctrine.

For St. Gregory man's power to choose either good or evil is one of the gifts to man in virtue of his being the image of God, but it is not the only gift: "Man" is made a holy [illegible] of the divine nature both in the other goods and in the autonomy of choice, keeping a likeness to his Divinity." But after the fall, the virtues were obscured and rendered useless by the corruption of will; and man in the state of "Paradise Lost" retained his [illegible] of choice and free-will; it is only when man through [illegible] grace [illegible] the [illegible] "Paradise Regained" that the perfections of the virtues in the image regain their former splendour and beauty. Free-will is a prerogative of man as the [illegible] of earthly creation and as a rational being made to know and *enjoy God through contemplation which is the summit of a life of virtue.* "The royal dignity consists especially in man's being subject to no earthly master, in being independent, governing his own life and that of others by his own [illegible] . . . *The fact that man was made the image of the nature which rules all things means nothing else than that he was straightway endowed with a royal nature.*"

But, as we have seen, man has a twofold function: he is not only to rule lower earthly creatures but also to contemplate and enjoy God. This contemplation of the Divine goodness is attained by the practice of the virtues to such a degree that the original splendour of the grace with which man was endowed at his creation regains its lustre; by contemplating the goods in his own soul which are imitations of the corresponding goods in God, man is able to know, see and love God in His attributes. In the restoration of the image of God in man it is the will which is the efficient cause: by its choice of the real good as against apparent goods the soul attains to virtue. St. Gregory uses again the figure of the painter but not this time to illustrate man's independence as lord and master of the earth but as bringing out more and more by the practice of virtue the beauty of the image of God which he [illegible]. Christ Incarnate is the true image and exemplar of the invisible God. The Word became man that He might make us again the image of God, that we might be formed to the form which He assumed and be refashioned through Him to the beauty of the image of God which was man's original endowment. Through Him we become the image of the image, that is in becoming like to Him we become

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[illegible] De Virginitate [illegible], PG [illegible] [illegible] [illegible]

[illegible] Cf. In Cantica Canticorum [illegible], PG 44, [illegible]; De Hominis Opificio [illegible], PG 44, [illegible].

[illegible] Oratio Catechetica [illegible], PG [illegible].

[illegible] Cf. De Hominis Opificio [illegible], PG 44, [illegible]; In Ecclesiasten [illegible], PG 44, [illegible].

like to God. And in this reformation of ourselves the will is the painter, Christ in His earthly life is the exemplar to be reproduced and the virtues are the colours: The incomprehensible and ineffable Word "became[55] the image of the Invisible God through love for man that you might be formed by His form which He assumed and through Him be again fashioned according to the character of the archetypal beauty to become what you were from the beginning. If therefore we are to become the image of the Invisible God, the tenour (eidos) of our life should bear the mark of the pattern of life proposed to us, that is, that while living in the flesh, we should not live according to the flesh . . . If we were to be taught the art of painting, the master artist would set before us some beautiful portrait, and each of us on his own canvas would have to imitate exactly its beauty so that the canvas of each of us would be an artistic representation of the model of beauty set before us; in the same way each one of us is the painter of his own life; the artisan of this work is free-will, the colours to portray this work are the virtues . . . as far as possible the colours of the virtues should be pure, mixed by an artist's skill to express the reproduction of beauty that we may become images of the image and by as true an imitation as possible reproduce the beauty of the prototype."

It is then by man's power of free choice that he pursues real goods and practises virtue. There is always a choice to make owing to man's nature. He must always make a choice between the real goods, the things of eternal value and apparent goods catering to the tendency in man since the fall to seek pleasure from temporal and earthly goods. "It[56] is in our power to be what we will." But "there[57] is a twofold pleasure in the soul: the one is effected in the soul through self-control, the other in the body through the passions; which of the two man chooses, that rules over the other." Man is like a statue with two faces, the one looking up to the things of the spirit, the other down to the things of the flesh: "Just[58] as one sometimes sees in works of art twofold forms which the artists have produced to the consternation of spectators, making two faces on one head, so, it seems to me, man bears a twofold likeness to contraries; by the divine likeness of his mind he is formed after the divine beauty, but by the movements of passion he bears a likeness to the beast."

We are free from any external necessity which could prevent us from choosing good; man's lower nature tends to pull him down to earthly apparent goods but in spite of this his decision is free, he can form his own judgment and discern the true goods. But if he chooses only apparent goods, evil thereby results; evil is negative, it has no existence *per se* but is a production of our own will: "It[59] is in our power whenever we will and depends on our own judgment to attain what we long for, to find the object of our quest and to be in possession of what we have our heart set upon . . . The inclination to evil comes from no compelling external necessity, but as soon as we have chosen evil, it subsists and once we have chosen it, it is brought into existence . . . evil is found nowhere apart from the will . . . Good and evil conduct alike depend on our free-will." The vicious soul obscures the divine image implanted within him and assumes the form and countenance of the devil: "If[60] the divine character itself is imprinted on the virtuous life, it is clear that the vicious life becomes the form and countenance of the adversary; . . .since the power to choose either alternative according to our independence is bestowed upon us, let us flee from the form of the devil, put off the wicked person and resume the divine image . . . Through Christ Jesus Our Lord."

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[55] *De Perfecta Christiani Forma*, PG 46, 270D-272A.

[56] *De Beatitudinibus* 5, PG 44, 1256A.

[57] *In Cantica Canticorum* 11, PG 44, 993C. The intellectual and light principle in man's nature tends towards things above, the heavy and earthly tends to drag him down. One of the two must prevail; "our free power of choice stands between these two inclinations and by itself imparts firmness to the former when it is weakening and restrains the latter when it threatens to prevail." *Op. cit.* 12, 1017CD.

[58] *De Hominis Opificio* 18, PG 44, 192CD. Grosseteste in his *Hexameron* speaks of the suprema facies rationis. In my edition of the first twelve chapters of that work (*Mediaeval Studies*, 1944, pp. 151-174), I referred in a note (p. 164) to the doctrine of the two faces in Algazel and Avicenna. Grosseteste may well have coined the phrase by adapting this text of St. Gregory though he uses it in a somewhat different sense.

[59] *De Beatitudinibus* 5, PG 44, 1256AB.

Every one, man and woman alike, is endowed with this power of choice and by the exercise of it we generate so to speak our own future character; just as truly as parents generate their offspring so in the moral order we are our own ancestor: "Every[61] person, male or female, is endowed with this power to choose good or evil." "This[62] generation (of our moral character) is not from the passion of another after the manner of bodily generation but from our own choice; we are our own parents." We are a vase formed by the divine potter, it is true, but the vase has power from its own free choice to become material of gold, wood or even clay.[63]

Man, then, made to the image of God is endowed with the gifts of immortality, reason and free-will. But these do not exhaust the goods possessed by man as God's image; he was enriched also by having implanted in him all the goods, the attributes, found in the Divine Nature. These other goods are the virtues which man received from the creating hand of God. What is St. Gregory's notion of the virtues?

(d) *The Virtues*

St. Gregory does not give a complete list of these virtues but says they are too many to enumerate. He follows Aristotle in defining virtue as a mean between two extremes: "Wherefore[64] every virtue is a mean between evils, *viz.* between defect of uprightness (to kalon) and its excess just as they say courage and liberality are seen to consist in the mean, the former between cowardice and rashness, the latter between prodigality and meaness: cowardice and meanness they classify as vices because of their falling short of what is becoming: prodigality and rashness because they are an excess and superabundance; the mean between the disproportions of the two they call virtue." But St. Gregory does not at any length develop this definition; his approach to his treatment of virtue is not the consideration of it as an act performed according to right reason and following the middle path; he keeps constantly in mind that the virtues are imitations of the divine attributes implanted in man's rational nature whereby he is the image of God. The virtues are an integral part of man's original possession in virtue of his being made the image of God. St. Gregory does not make the classifications found in scholastic times of the moral and theological, the acquired and infused virtues. For him all the virtues were originally implanted in man by God when He created him.

Virtue in its negative aspect is the uprooting and destruction of the vices thus enabling the original virtues to shine again in all their splendour. For by sin the image of God in man is not destroyed but covered over and obscured by the rust and filth of vice, of undue attachment to the things below. The divine artist painted in the portrait, the image of Himself, "the[65] vesture of the virtues after His own beauty . . ."; instead of tints and shades we find "purity, freedom from unruly passion (apatheia), beatitude, alienation from all evil and all other like attributes through which the likeness of the divinity is found in men; with such hues did the Maker of His own image mark our nature." These virtues have become crusted over with vice and man by rubbing off this crust of rust through uprooting the vices into which he has fallen restores the virtues hidden underneath in all their pristine sheen and splendour: "God"[66] impressed in your formation the imitations of the goods of His own nature like moulding wax, as it were, into the shape of a statue. But evil spreading over the God-like character, covering it with base veils has made it useless to you. But if by a careful life you wash away the filth formed in your heart, the divine beauty will shine forth in you again. Just as in the case of iron, when the rust has been rubbed off with a whetstone, though the iron was black a little before, it reflects certain rays in itself against the sun and gives off brightness; so also the interior man . . . , when it has rubbed off the excrescence of rust which has accumulated on its form with its debasing squalor, will regain its likeness to the archetype and will become good."

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[60] *Op. cit.*, 6, PG 44, 1276D-1277A.

[61] *De Vita Moysis*, PG 44, 301D.

[62] *Op. cit.*, PG 44, 328B.

[63] *In Cantica Canticorum* 7, PG 44, 912C.

[64] *Op. cit.*, 9, PG 44, 972A.

[65] *De Homiris Opificio* 5, PG 44, 137AB.

St. Gregory treats the virtues as habits more than their operation. The virtues are the perfections originally implanted in the image in man which are again brought to their pristine splendour by catharsis which is the removing of the accretion of evil from the image by choosing the real as against the apparent goods. From this point of view, for St. Gregory, the practice of virtue in its effect upon the soul has a negative function. Where we would speak of the mortification of the passions, he speaks of purgation, catharsis. Since this process has an important role in the exposition of St. Gregory's thought, let us try to see what he means by it.

III. *CATHARSIS*

This process of cleansing the soul from the accretion of vice is called by St. Gregory catharsis (cleansing, *purgatio*) a term which in its nominal or verbal form occurs in his writings times without number. Catharsis is the first stage in the process of sanctification, the foundation and *sine qua non* of reaching the stage of contemplation of God. Once man sinned, the beauty of the image was blackened and obscured and ruined under the rust and accretion of evil. By catharsis he removes this accretion and the beauty of the image shines forth again; man returns to the state of beauty which he had once possessed in Paradise: "once[66a] the habit of sin entered into the life of man . . . that God-like beauty of the soul which had been produced by imitation of the archetype became blackened with the rust of evil like a piece of iron and no longer preserved the great beauty of the image proper to it by nature . . . Man fell from his dignity, and like those who fall into the mire have their face covered with mud and are not recognized even by their comrades, so man falling into the filth of sin ruined his character as an image of the incorruptible God and through his sin put on a corruptible and slimy image which reason bids him remove by the water, as it were, of purity of life. The divine goodness is not separated from our nature nor does it dwell far from those who choose to seek it; it is in each one of us, unknown and escaping notice . . . but it is found whenever we turn our mind back to it." This process is directed against a threefold irregularity in the soul, the tendency to evil inherited by every man from Adam, this same inclination strengthened and intensified by our own personal sins, and the sins and vices which have taken hold in the soul.

To cleanse our soul from the evil tendencies we have from Adam is a slow and difficult task. Every man is born a sinner in the sense that he has received a soul in which is found disordered appetites. St. Gregory, as we shall see later on, does not teach that the grace lost through Adam is restored through catharsis but through Baptism.[67] The guilt of sin is not remitted through purgation but man's propensities are brought under control and bad habits are corrected. This process of purification must precede Baptism for adults and continue, if necessary, not only throughout his mortal life but even extend into eternity until the last vestige of irregular affection for created things is extirpated: "There[68] is no question but that beatitude is produced from the cleansing of the heart," but for man to cleanse his heart from all its defilements, that is not like being taken up in a chariot, "for this earthly weight pulls him down. If he have a mind alert to the passions of the soul, which are as it were, necessary, he will think that it is difficult and all but impossible to get rid of the evils to which he is yoked. Man's generation arises from passion, through passion he grows up and into passion our life melts away, in a sense evil is mingled with our nature through those who originally gave entrance to passion and through disobedience brought in the ailment (nosos). Like generates like, the offspring has the nature of its progenitor; man is born from man, the passionate from the passionate, sinner from sinner. In a sense sin coexists with the generations, it is born and grows up with them and ceases only at the border line of mortal life. Virtue is hard to obtain and is acquired only by much sweat and labour, by earnestness and weariness as Scripture teaches us, but it does not say that the sublime life is utterly unattainable but its Sacred Books set forth the wonders of so many men. There are two meanings to the promise to see God; one is to know the nature of Him who transcends all, the other is to be united to Him through a spotless life; the former kind of contemplation the saints tell us is unattainable, the latter the Lord promises to human nature when He says: Blessed are the clean (katharoi) of heart since they shall see God."[69]

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[66] *De Beatitudinibus* 6, PG 44, 1272A.

[66a] *De Virginitate* 12, PG 46, 372B-373A.

And it is not only the innate weakness of man as a descendant from Adam that man must cure by catharsis, but his passions and lower appetites have been strengthened by his own sinful indulgence. The ill-regulated impulses in man are not to be obliterated since they come to him in virtue of the union of the rational soul with a material body but they are to be regulated by and made subject to reason. They are not evil in themselves but are neutral; their character and value are determined by the use made of them. As we have seen, only the rational element of our nature bears the imprint of the divine image. The non-rational life, the vegetable and sentient life with its appetites and passions, belongs to man only because the rational soul dwells in a material body and it is through the non-rational life of man that such a union and indwelling of the intelligible and sensible is possible: "All[70] these (the manifestations of man's non-rational life) which exist in us are called passions: and they were not allotted to man's life for any evil purpose, but such movements of the soul become instruments either of virtue or of vice according to the use free-will makes of them." They are like a piece of iron which is fashioned by the artisan into whatever he wills. "If[71] then reason, that which is the excellent part of our nature, holds its sway over these elements imparted from without . . . none of such movements would issue in us for the service of evil; fear will foster obedience, anger will foster courage, timidity will foster caution, and the appetitive impulse will foster in us the divine and untarnished pleasure. But if reason loses its hold on the reins and like a charioteer who has tumbled from his chariot and is dragged along behind wherever the irrational movement of the steeds carry him, then the impulses (hormai) are turned into unruly passions just as one sees in the brutes." If reason gives loose reign to these non-rational impulses it in turn is dragged down and becomes gross and man's whole life becomes brutish: "By[72] the divine gift of his mind he is formed after the divine beauty, but by the passionate impulses (hormai) engendered in him he bears a likeness to the brute. Oftentimes even his reason is made brutish by the pull and disposition towards what is irrational and obscures the better beneath the worse. For when a man draws down his mental energy to the irrational and forces his reason to become the servant of his passions, there is effected a transformation of the good character to the image of the irrational, his whole nature being re-marked after that design as his reason cultivates the beginnings of his passions and increases them from a few to a multitude . . . But on the contrary, if reason assumes sway over such movements, each of them is changed to a form of virtue . . . every such movement when raised up by loftiness of mind is conformed to the beauty of the divine image." In the man who is the slave of passion the divine gift is unrecognizable and the passions of the flesh like an ugly mask are placed over the beauty of the divine image; "but[73] in those in whom the beauty has not been obscured, the faithfulness of the words is kept: man is made an imitation (mimêma) of God." If man does not entirely purge his soul in this life from the irregular affections and defilements of sin, he will have to undergo further cleansing in the next life before being admitted into the presence of God: "I[74] think our Lord teaches us this: those still living in the flesh must as far as they can separate and release themselves from its habit by a virtuous life that after death they may not need a second death to cleanse away the remnants of the clinging flesh"; "Contemplation[75] and discernment belong to the God-like part of the soul . . . if then from diligence here or catharsis hereafter, our soul becomes free from the coalescing of the passions and what is irrational, nothing will hinder it from contemplation of the beautiful."

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[67] In Baptism we receive the grace of regeneration; we are no longer in sin and virtues are produced in the soul by the Holy Ghost; *De Baptismo*, PG 46, 421B-424B. This is but one instance where St. Gregory changes his point of view. The infusion of the virtues in Baptism does not harmonize with his doctrine on the function of catharsis. For the effects of the fall on man, cf. *De Beatitudinibus* 5, PG 44, 1257C ff.

[68] *De Beatitudinibus* 6, PG 44, 1272D ff.

[69] *Ibid.* 1273AC. Cf. *De Virginitate* 11, PG 46, 368BC; *In Psalmos* I, PG 44, 433A-C; *In Cantica Canticorum* 2, PG 44, 804BC; *De Beatitudinibus* 2, PG 44, 1216AB.

[70] *De Anima et Resurrectione*, PG 46, 61AC. Cf. 89B ff.; *De Virginitate* 18, PG 46, 392CD; *In Cantica Canticorum* 11, PG 44, 1009AC; *De Beatitudinibus* 1, PG 44, 1200C ff.

[71] *Loc. cit.* 61B.

By the same process of catharsis one scrapes off from the soul evil habits and replaces these with virtues. Vice is the absence of virtue which replaces it after driving out the vice. For evil has not existence *per se* but results when the will chooses apparent instead of real goods; therefore, once man turns back to the true good, vice, the clinging to the things of earth, no longer exists in him: "The[76] distinction between virtue and vice is not as between two things which are seen to have substantial existence (kath' hypostasin), but as the non-existent is distinguished from the existent; and it is not possible to say that the non-existent is by its subsistence opposed to the existent but we say that the subsisting is logically distinct from the non-subsisting. In the same way is vice opposed to the essence of virtue not as something which has being *per se* but as comprehended in the absence of virtue; and just as we say blindness is distinguished from sight not as *per se* subsisting in its nature but as the privation of what was before possessed, so we say evil is viewed in the privation of good." Evil habits are replaced by good, the evil being thereby scraped off. St. Gregory tries to harmonize the ontological view of vice as the opposite of the notion of virtue with his often repeated figure that evil is a rust, an incrustation on the soul obscuring the beauty and the virtues concealed beneath. His difficulty arises from his confusion of the notion of virtue as a good habit with that of catharsis which is the cleansing, the purgation of the soul from the accretion of evil, thereby uncovering and restoring to their splendour the virtues already existent from the beginning.[77] "When[78] Paul says: to me to live is Christ, by this exclamation, he cries out that no human and crass passion lives in him: not pleasure, not grief (lupê), not anger, not fear, not cowardice, not trepidation, not conceit, not rashness, not remembrance of injuries, not envy, not a vengeful disposition, not avarice, not anything which stains the soul through any habit, but to me, He alone is Who is none of these. Having scraped off everything which is seen to be foreign to His nature, I have nothing in myself which is not in Him. Christ is holiness and purity (katharotes) and immortality and light and truth and whatever else feeds my soul . . . We say that the soul feeds on the virtues . . . temperance and justice and fortitude and prudence . . . and whatever, as the Apostle says, is honest, whatever lovable, whatever just . . . every virtue."

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[72] *De Hominis Opificio* 18, PG 44, 192D-193D. Cf. *In Cantica Canticorum* 8, PG 44, 944D ff.

[73] *Op. cit.* 196A.

[74] *De Anima et Resurrectione*, PG 46, 88A. Cf. De Beatitudinibus 2, PG 44, 1217D.

[75] *Op. cit.* 89B. St. Gregory held that finally all souls, and even Satan himself after all but endless ages of purgation, would be restored to God's favour. Following Origen, he makes of hell a purgatory which for some lasts a long time. He can hardly be cited as a witness, as an odd spiritual writer does, of the teaching of purgatory as an intermediate state between heaven and hell. Cf. *Oratio Catechetica* 26, 35, 36, PG 45, 68-69; 85-93.

[76] *Oratio Catechetica* 6, PG 45, 28C: cf. 32B.

By catharsis then the soul cleanses itself from the tendencies and weakness inherited from Adam, from these same inclinations strengthened and increased by personal sin and from sinful habits which have taken root in the soul. Through this process a man scrapes off the incrustations of evil and the virtues he possessed in his original justice in Adam shine forth again: "The[79] good produced in us by our pains is none other than that which was placed in our nature from the beginning." "The[80] soul becomes again the divine habitation: the heart is in every way a treasure-house since it then becomes capable of receiving the divine indwelling once it has returned to the state in which it was from the beginning." And since these virtues are but reflections of the divine beauty, of the divine attributes, man by looking at these reflections of God's perfections beholds the divine beauty, the deity itself. Man's soul becomes a mirror in which he can see God. This is a striking doctrine in a Christian writer. Let us see what St. Gregory means by it.

IV. *THE MIRROR OF THE SOUL*

Once the soul purges itself of the accretion of evil, the virtues implanted in man in the beginning shine forth in all their splendour. And since these virtues are but imitations of the perfections of God, one can by contemplating the virtues in his own image contemplate their archetype, God's attributes, the deity itself. Man's soul, once purified becomes a mirror in which he can see God. But to reach the vision of God one must have first purified his soul from all attachment and affection for things of this life. As a mirror does not reflect the light if its surface is marred and stained, so too with the soul; it is only by attaining the state of utmost purity that she can be as it were a mirror reflecting the beauty of God. This contemplation of self does not of course for St. Gregory consist of a complacent and self-satisfied consideration of one's own goodness. It is an adaptation of the interpretation of later Platonism of the old Socratic dictum: *Know thyself*. It is an instance of what Professor Gilson calls 'Christian Socratism' which is found down through the centuries both in patristic and in mediaeval spiritual writers. In St. Gregory it means that man by contemplating the virtues of the image restored by catharsis sees the attributes of God of which they are reflections and so sees the deity itself. The soul becomes a mirror in which one sees God: "Nothing[81] will prevent one from participating in the good, if he frees himself from such movements (towards sin), and returning to himself again, comes to fully know himself what he is by nature and through his own beauty in his image as in a mirror looks at the archetype." Man can no more look at the divine essence with the eye of the mind than by the eye of the body upon the sun. But he can look upon the divine attributes of God as they are reflected in the mirror of the soul: "What[82] is by essence above all the constitution and government of reality is inaccessible, intangible and incomprehensible. But the good odour which like an unguent is produced in us by the purity of the virtues exists in us in place of that Being, imitating by its purity that which by nature is undefiled, by its goodness the good, by its immortality the immortal, by its unchangeableness the unchangeable and by all that is virtuous conduct in us the true virtue . . . (yet) if a man cull every sweet-smelling flower or aroma from the variegated meadows of virtue making his whole life an unguent through the good odour of each pursuit thereby becoming perfect in every way, still he could not by nature fix his gaze on God the Word like the orb of the sun, but in himself so to speak he sees the sun in a mirror. For the rays of that true and divine virtue shine forth in the purified life through the freedom from irregular affection (apatheia) which emanates from them and they make that visible to us which is invisible and the inaccessible comprehensible forming the sun in our mirror . . . There is a knowledge of the good which is above all understanding through the virtues just as it is possible through an image to conceive of the archetypal beauty."

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[77] I find the Latin term, *purgatio*, only three times in the Bible: *Luke* ii, 22, where it means legal purification after childbirth; and, II *Peter* i, 9, *Hebrews* i, 3, where it means the redemptive role of Christ. The corresponding term in the New Testament is *mortificatio* (*nekrosis*) generally in a verbal form. St. Gregory occasionally uses the term mortification (*nekrotês*); cf. PG 44, 988D, 1016D, and *nekrôsis*, 1017A; the Greek word *katharismos* is found seven times in the New Testament but usually in the sense of legal purification.

[78] *In Cantica Canticorum* 15, PG 44, 1096A-D. Notice that St. Gregory confuses passions with vices.

[79] *In Cantica Canticorum* 6, PG 44, 905A.

[80] *Op. cit.*, 6, PG 44, 893C.

Man's mind is a mirror and reflects the object placed before it; if a man turns from evil to good and thereby draws near the good, man's mind will reflect it: "The[83] mind has been adorned with the likeness of the beauty of the archetype and like a mirror is conformed to the character of that which it expresses." Just[84] as one says that the beauty of a portrait painted on a canvas is the beauty of the person portrayed and "just as a mirror which through skill has been made suitable for use on its clear surface accurately receives in itself the character of the countenance it reflects, so the soul, after it has suitably conditioned itself for use and cast off all the mire pertaining to this world, impresses the pure form of the undefiled beauty in itself." To see God in the mirror of the soul is not to contemplate God as entirely external to one's self: *The Kingdom of God is within you.* "When[85] the Lord says *Blessed are the clean of heart for they shall see God*, He does not, it seems to me, set God as an object of contemplation external to the soul; but He teaches us that he who has cleansed his heart from all creatures and from every passionate disposition sees in his own beauty the image of the divine nature." But there is a positive side to catharsis; it is a cleansing of the soul and also a turning of the soul towards the real good as opposed to the apparent goods of this world: "If[86] a man separates himself from what allures him to evil and turns his attention to the better, placing evil, so to speak, behind him, he thereby places his soul like a mirror facing the hope of true good so as to express in the purity of his own soul the images and appearances of the virtue from God manifested to him." To see God is the life of the soul; and to see God is to have God. One who sees the deity in the virtues of his own soul, possesses, has God within him: "You[87] men who are possessed by a desire of contemplating the true good, when you hear that the divine majesty is exalted above the heavens and that His glory is unfathomable, His beauty ineffable, His nature incomprehensible, do not despair of being able to see the object of your desire. For there is a measure of contemplation of God within your reach . . . if by a careful life you wash off the filth formed in your heart, the divine beauty will shine forth in you again. . . . such a one who looks at himself sees in himself the object of his desire and so the clean of heart becomes blessed, for looking at his own purity he sees in the image the archetype. Just as those who see the sun in a mirror though they do not gaze at the sky itself, nevertheless, they see the sun in the reflection of the mirror just as much as those who look at its orb. So . . . also even though the contemplation of the light overcomes your strength, if you return to the purity of the image established in you from the beginning, you have in yourselves what you seek. For purity (katharotês), freedom from irregular affections (apatheia) and removal (allotriôsis) from all evil is deity: if these are in you, God certainly is in you. The man whose rational power is cleansed and free from all wickedness, irregular affection and defilement can through his clear vision see clearly in the pure serenity of his own heart the blessed sight. What are these? Purity, holiness, simplicity, all such lightsome radiances of the divine nature by which God is seen."

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[81] *De Anima et Resurrectione* PG 46, 89C.

[82] *In Cantica Canticorum* 3, PG 44, 824AC. Cf. 953BC.

[83] *De Hominis Opificio* 12, PG 44, 161C.

[84] *In Cantica Canticorum* 15, PG 44, 1083CD.

[85] *De Beatitudinibus* 6, PG 44, 1269C.

But for St. Gregory, there is a second way of arriving at the vision of God. This is the ascent of the soul to a consideration of the divine by raising itself above all affection for things of earth. The soul rises from the apparent goods of earth to contemplate the true goods, the things that really are as they are found in God. Man can rise to a vision of God and thereby effect union with Him who by essence is inaccessible to him, by spurning the things of earth as of little or no worth. This doctrine of St. Gregory does not directly concern us here but I mention it because in some passages he tries to fuse and blend it with that of the soul-mirror theory as in the following passages.[88] Man by practising virtue draws near the divine beauty which is there reflected in his soul: "It[89] is not enough to rise from a fall but one must make progress in virtue . . . How is it possible to behold a beautiful sight in a mirror unless it has received the image of some beautiful object? And so the mirror of human nature will not become beautiful until it has come close to the beautiful and has been informed by the image of the divine beauty . . . Once the soul rises and places the good before its eyes, having turned its back on vice, and proves itself turned toward the good it becomes conformed at that upon which it looks." "Just[89a] as in the case of a mirror . . . whenever it receives the rays of the sun, it produces other rays in itself. This it would not do if its pure and shining surface were made useless by some stains of dirt . . . The soul cannot be brought into contact and conjunction with the incorruptible God unless it itself become as far as possible pure that like may apprehend like and as a mirror place itself beneath the purity of God and thereby take on the form in herself of the archetypal beauty by her communion with it and by her manifestation of it."

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[86] *De Vita Moysis*, PG 44, 340A. Cf. *In Cantica Canticorum* 4, PG 44, 829B.

[87] *De Beatitudinibus* 6, PG 44, 1269CD.

[88] St. Gregory is attempting the impossible task of harmonizing Plato's theory of direct vision of the good and Plotinus' teaching of contemplation of and union with the One through self-contemplation with the doctrine of man's incapability in this mortal life of rising to a direct vision of God.

[89] *In Cantica Canticorum* 5, PG 44, 868BC. Cf. 996B.

[89a] *De Virginitate* 11, PG 46, 368BC.

To sum up: St. Gregory teaches that when God created man after His own image and likeness, He endowed him with the perfections which correspond to all the attributes of the divine nature according to the capacity of a finite creature to receive them. Every perfection in God is found by imitation in God's image in man and also every true perfection found in man is but the imitation of its corresponding perfection in the archetype, God. Among these are immortality, mind, free-will and the virtues. Immortality was lost through the sin of Adam and the virtues were rendered obscured and useless; only mind and will remained operative in fallen man. The weakness and ailment of human nature resulting from the sin of Adam, the multiplication and intensifying of these innate irregular tendencies and impulses by each individual's personal indulgence, the evil habits formed by each individual, all these form an accretion, a film, a rust, an incrustation on the soul covering over and obscuring the perfections with which man as the image of God was originally endowed. By the process of catharsis man cleanses, rubs off, files away this accretion and the perfections of the image are restored to their pristine sheen and shine forth in their original splendour. Catharsis accomplished by the free choice of man's will as he turns from the earthy and sensible and material to the heavenly, intelligible and spiritual, from the apparent good to the true good. Once the perfections in man are restored to their original splendour, man can by contemplating these perfections which are imitations of the divine perfections see and contemplate the latter as they are reflected in the mirror of man's soul; and these divine perfections are deity so that in that sense man can in this life contemplate deity but not the divine nature in its essence, not God *qua* God.

It will be recalled that the purpose of this study is to furnish a possible source of the doctrine of St. Bernard on the image of God in man. How much of St. Gregory's thought on man as the image of God will be of use in tracing St. Bernard's teaching on the same subject? If he used St. Gregory's works, by what channels did they reach him? He did not read Greek. Did he have access to a Latin translation of Gregory's works, especially of his late works? Or did they reach him through some intermediate source? These questions await an answer in a subsequent article.

From our study so far it might be objected that St. Gregory expounds merely a philosophical system of natural mysticism. And there are texts in his works many of which I have quoted which could, taken each by itself, be interpreted in that way. This is especially true of St. Gregory's earlier works. I am strongly of the opinion that an analysis of each of his works taken separately which deal with spiritual perfection would show that there is a development in his thought as he goes along. The earlier works, *De Virginitate*,[90] *De Hominis*

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[90] We do not know the exact dates of the composition of St. Gregory's many works. *De Virginitate* is in all probability the first. From intrinsic evidence it appears that *De Hominis Opificio* and *De Anima et Resurrectione* were written shortly after St. Basil's death in 379, nearly eight years after St. Gregory had been consecrated bishop; *Oratio Catechetica* likely shortly after 383; *De Vita Moysis* about 390; *Homiliae in Psalmos* before *In Cantica Canticorum* both of which along with *De Beatitudinibus* likely belong to the later part of his life. St. Gregory was living in 394 and he likely died soon after as there is no mention of him as still living.

Opificio, *De Anima et Resurrectione* are developed more along the line of philosophy. But in his later works there is an ascetical and mystical theology on the supernatural level; this is expounded especially in *De Vita Moysis*, *In Cantica Canticorum* and *De Beatitudinibus.* In the earlier works the perfection of man is attained chiefly by catharsis and is effected by choosing what is the true good until the soul, purged of the accretion of irregulated passions and vices, shows forth in their pristine splendour the perfections implanted in man when he was made to God's image. In the early works there is only here and there a doctrine based solely on Scripture. In his later works St. Gregory describes in detail the progress of the soul in holiness culminating in mystical vision; he does not entirely abandon his mirror theory which is so prominent in his earlier works but tries to integrate it with the mystical theology which he builds upon a Scriptural basis. In short in his earlier works, he is primarily a philosopher; in the later ones, he is a theologian attempting to Christianize, to give a Christian turn and interpretation to any philosophical tenet he uses. My purpose in this paper has been to set forth his doctrine on man as the image of God. I am not attempting to expound St. Gregory's mystical theology. But that the reader may not form a distorted view of St. Gregory's thought on perfection, I shall outline very briefly some of the chief features of his ascetical and mystical doctrine.[91]

V. *ST. GREGORY'S MYSTICAL THEOLOGY*

For Gregory, Baptism which is necessary for salvation is the starting point

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There is however in the first chapter of *De Virginitate* I (PG 46, 320C) a clear statement of the need of grace to preserve virginity: "The holy countenance (eidos) of virginity which all esteem who make purity the test of beauty becomes the possession of those alone whom the grace of God kindly assists towards this noble desire".

Some see in twelfth chapter of *De Virginitate* two other references to grace. In the first (PG 46, 372), St. Gregory says that once the habit of sin has taken hold of a man's life and brought in countless evils, "that God-like beauty of the soul made after the imitation of the prototype, like a piece of iron blackened with the rust of evil no longer preserves the grace, so great, of its natural image but is transformed to the deformity of sin." But the phrase, grace of the image, is opposed to the ugliness, baseness, deformity (aischos) of sin. Does it not mean here, favour, comeliness, beauty rather than sanctifying grace? The other passage is just below the former (372C); St. Gregory says that the casting off of what is foreign is the return to what is proper to us by nature: "one does not attain this unless he become again such as he was created from the beginning. For the likeness to God is not our work nor an achievement (katorthoma) of human power, but is of the munificence of God who at the time of the first formation furnished His likeness to man's nature." St. Gregory does not say that the return to our first state is a gift of God, but that the original likeness was God's gift.

[91] I know of no work on St. Gregory's mystical doctrine as such. There is much information on it in Franz Diekamp, *Die Gotteslehre des hl. Gregor von Nyssa* (Münster, 1896). It is a thorough piece of work but is faulty as being too apologetic in purpose and the author also uses the treatise, *De Instituto Christiano* which is evidently spurious. The title of Hugo Koch's article, *Das mystische Schauen beim hl. Gregor von Nyssa* (Theologische Quartalschrift, 1898, pp. 396-420) is a misnomer. The author is concerned mainly with an attempt to disprove the soundness of Diekamp's position found on page 91 of the latter's work: "Es ist nun unsere Aufgabe, zu zeigen, dass die Mystik des hl. Gregor, obschon hie und da an die des Philo und der Neuplatoniker erinnert, trotzdem in scharfem Gegensatze zu derselben steht, dass einerseits die Mittel, welche der Seele die mystische einigung mit ermöglichen, streng übernatürlich sind, und dass anderseits auch die höchsche stufe derselben, die Ekstase, keine unmittelbare Anschauung Gottes erreicht."

A recent work, *Platonisme et Théologie mystique. Essai sur la doctrine spirituelle de Saint Grégoire de Nysse* (Aubier, Paris, 1944) by Jean Daniélou gives a very full account of St. Gregory's mystical doctrine in relation to Plato and Plotinus. The author is very explicit in pointing out similarities in wording and thought between St. Gregory and these philosophers but his position is that St. Gregory interprets his borrowings in a Christian sense and presents an integral and consistent mystical doctrine. To do this Daniélou, in my opinion, in more than one instance strains the text of St. Gregory. See note 85 above.

of the mystical life. It frees one from the guilt of past sins; and through it the Holy Ghost dwells in the soul and produces in it the virtues, faith, godliness, justice, temperance, chastity, purity.[92] Baptism is a cleansing (katharsis) from sins, a remission of transgressions, being made friends towards God, a free familiarity, and from servile degredation equality with the angels.[93] The newly baptized has no personal sin for which to answer, no more than the newly-born babe.[94] Catharsis precedes baptism and the Holy Ghost must find in the catechumen a soul which is purged of irregular affections.[95] But there is a higher catharsis which is wrought in the soul sanctified under the economy of the Gospel. The soul nourished by the divine food and drink constantly goes on to the better until in the case of some it may be lifted up in ecstasy like St. Paul and St. Peter. In this process of catharsis, of the sanctification of the soul, it is God who cleanses, God the Father, God the only begotten Son, and God the Holy Ghost. It is the wine of such divine drink through which ecstasy is wrought in the soul to more divine things, and so it is those who are close to God by a virtuous life that the Lord bids: *eat, my friends (propinqui), and drink and be inebriated*. They are friends and brothers who are worthy to eat *viz.* those who do the will of the Heavenly Father. There is here evidently a veiled reference to the sanctification of the virtuous soul by the three Divine Persons through the Holy Sacrifice and sacrament of the Holy Eucharist.[96]

As the creation of man and the endowment of his soul is appropriated to God the Father, so the sanctification of the soul is the work of the Holy Ghost. But man is sanctified not as an isolated individual but as a member of Christ's Church through which by her power of prayer and the ministration of the mysteries the Holy Ghost becomes present and works in the soul.[97] The Holy Ghost does not simply touch the surface of the soul but strikes deeply into its very being and produces the virtues.[98] He it is that guides us to God for the salvation of our soul.[99] And not only does the soul which is freed from all vice receive the Holy Ghost but all the true disciples of Christ are made one and joined to the true and only good so that by the unity of the Holy Spirit they become one body.[100] In fine, the complete work of our sanctification and perfection is wrought by the Holy Ghost dwelling in us.[101]

The Incarnate Word reconciled human nature to God which had been alienated from Him by the sin of Adam. Man had by a similarity of will been engrafted on, so to speak, the family of the father of sin. The Word who knew no sin took upon Himself human nature and freed man from the curse of sin by taking it on Himself as His own; He became what we were that through Himself He might unite humanity again to God and man became once more a member of God's kingdom, a son placed in the station assigned to him by his God; the Word descended to us since we were unable to raise ourselves up to Him; the whole mass of humanity is sanctified along with Christ who is its first fruits; Christ became a ransom for fallen man; He is the mediator between God and man. It was love that moved God to devise such a manner of redemption. Christ's ignominious death was not necessary to redeem man; His life of perfection, miracles and power could have accomplished the work; but having become man he ran the whole course of man's experience from birth to death.[102] He brings springtime to human nature after the long winter of sin and enables it again to be adorned with its flowers and bear its fruit of virtue in due season.[103]

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[92] *De Baptismo*, PG 46, 421B. St. Gregory refers throughout to the baptism of adults. But in his treatise *De Infantibus qui praemature abripiuntur* (PG 46, 161-192), it is clear that infant baptism was the practice.

[93] *In Baptismum Christi*, PG 46, 580B.

[94] *Op. cit.*, 581A.

[95] *De Baptismo*, PG 46, 421B.

[96] *In Cantica Canticorum*, PG 44, 989B-992B. Whatever be the answer to the moot question of the existence of the law of the disciplina arcani in the first three centuries, there is much evidence that in practice, at any rate, there was such a discipline in the fourth century. Cf. *De Baptismo* (PG 46, 422C) for a probable reference to the *disciplina*.

[97] *In Cantica Canticorum* 12, PG 44, 1016AB.

[98] *Loc. cit.*, 1033B-D.

[99] *Op. cit.* 14, 1088A.

[100] *Op. cit.* 15, 1116D-1117A.

[101] *De Beatitudinibus* 4, PG 44, 1245C-1248C.

Christ leads man to God by His life, by His example, and by His doctrine. We imitate Christ by our works, so that Christ lives in us and there is no affection in us which is not in Him.[104] He is the exemplar according to which we shape our life renewed, and in becoming like Him, the image of the Invisible Father, we become like to God. Christ is the way the soul must follow, yes along which it must run, to reach eternal life. Christ tells us not to go the way of the unbelievers but to follow the holy way of Himself who said *I am the Way.* We must follow that royal road once Christ has washed our feet, has cleansed us from sin; for through baptism we have put off the garment of our dead man and cast off all earthly defilement. The Lord is the light and truth, immortality and justice, the stone with which the spiritual road is paved. The entrance to sanctification is not to take on again the defilement cast off, not to give entrance again to earthly defilement on the journey of life but to follow the way of Christ Who is sanctification;[105] He is the author and captain of our salvation.[106]

Christ leads us to God also by His teaching. The Gospel gives us all truth necessary for salvation and he who has Christ's truths expressed in the Gospel needs no further truth.[107] It is an advance beyond the Old Testament with its legal regulations and is on a different level entirely from that of the wisdom of the unbelieving philosophers. Christ does not speak to us in the words of the prophecies and legal enactments of the Old Law, but He is Himself the lawgiver of life. God is truth; the light is truth . . . This truth shining from the burning bush of the humanity of the Saviour recalls us to the knowledge of Himself through the trumpet of the Gospel.[108] By His teaching He shows us Himself and those who have received the graces of the Gospel recognize His sweet voice. The Gospel is our pedagogue to God.[109] But Christ also nourishes the soul regenerated by baptism by His own Body and Blood in the Blessed Eucharist. Just as bread and wine partaken of by Christ on earth was transformed into His own Body and Blood for His own bodily life and thereby became the receptacle of the deity, so bread and wine by the prayer of the Eucharist is transformed into the Body and Blood of Christ for the nourishment of our soul. And by mingling Himself with our mortal nature, Christ Who overcame death and rose again, imparts to human nature the prerogative of immortal life and invests it with the power of being raised again in resurrection.[110]

The perfection and term of man in this life and in the next is contemplation (theoria). This is not an abstract consideration of God's Being but a mystical knowledge, a vision of, a gazing upon God, upon His attributes in this life, and upon God *qua* God in the next. The pagan philosophers reasoning from effect to cause had some knowledge of God, but man's mystical contemplation of God is not only to know about God but to have God within one. The pagan in his knowledge of God is like a physician who knows about health but does not possess it; a Christian's knowledge of God is like the knowledge which a healthy physician has of health, he not only knows about it but possesses it and experiences it.

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[102] *Contra Eunomium* 12, PG 45, 888B-892C; *op. cit.* 2, 532D, 545A; *Oratio Catechetica* 25, 32, PG 45, 65D, 77D ff.; *De Beatitudinibus* 2, PG 44, 1209B. St. Gregory does not adequately expound the redemptive value of Christ's death nor the efficacy of the *gratia Christi* in the sanctification of one's soul. But his chief dogmatic work was against the heresy of Eunomius, the refutation of which did not call for any enlarged treatment of those points.

[103] *In Cantica Canticorum* 5, PG 44, 869C-872A. Cf. *De Professione Christiana*: Christianity is imitation of the divine nature PG 46, 244C.

[104] *Op. cit.* 15, PG 44, 1096A-C.

[105] *Op. cit.* 11, PG 44, 1005D-1008C. Cf. 1097AB, 1112CD.

[106] *Oratio Catechetica* 35, PG 45, 88C.

[107] *In Cantica Canticorum* 5 ,PG 44, 877BC. But the Gospel is safely interpreted only in accordance with tradition and the magisterium of the Church as we shall see.

[108] *De Vita Moysis*, PG 44, 332CD.

[109] *In Cantica Canticorum* 5, PG 44, 877B-D; 8, 945C.

[110] *Oratio Catechetica* 37, PG 45, 93A ff. For the change of the bread and wine into the Body and Blood of Christ, St. Gregory uses the words *metapoioumenos*, *metastoicheiosas*, each of which means a change of substance or elements.

There are two ways of arriving at a true knowledge of God. One is by reasoning from the world about us to its creator, from effect to cause. The soul, that is cleansed from any disposition towards crass and earthly things through a virtuous life, turns to what is akin to its higher nature and divine. It seeks the principle, the cause of the power, beauty and order of heavenly and earthly creation and arrives at the knowledge of God which is gained through beholding His works but this knowledge does not extend to His nature.[111] This is a valid process, and St. Gregory makes much use of it, but he also warns us that the non-Christian thereby often goes astray and is led into idolatry, worshipping as gods what are but creatures.[112] True knowledge of God up to a certain point is gained from consideration of His works in external nature, but we should not yield to curiosity in this process and try to peer too deeply lest in reasoning from nature on that nature which is beyond our reach and ineffable, we give ground for heresy against the truth.[113]

The second way to know God is from God's own revelation of Himself through the Holy Scriptures. But here again there is danger of error if one interprets them without the help of the guiding magisterium of the Church in accordance with the tradition of the Fathers. All the words of Scripture are the utterances of the Holy Ghost.[114] The teaching of the Church is the norm of our Faith. It is enough proof of the certitude of a teaching that it has come down through patristic tradition handed on like an inheritance in succession from the Apostles and the Saints who came after them. The teaching of the Evangelists and Apostles and of those who through the generations have shone as lights in the Church is valid against all false reasoning of heretics.[115] It is through the grace of the Gospel especially that we gain knowledge of God. Once the Word Incarnate appeared on earth and conversed with men, man beheld the pure and spiritual beauty of the God-man, His divinity and the splendour of the true Light through His works and above all through His miracles. Through the Gospel we gain a firmer grasp of the mystical dogmas, since all doubt is taken away for we see them manifested in Christ Jesus, Our Lord.[116] And not only is God made known to us through the Incarnate Word but also through His Body, the Church. He who sees the Church sees Christ which He keeps building up by accession of those who are saved. Christ made a new heaven and a new earth, the Church, and He who sees it, sees Him Who is all in all leading us to a knowledge above our nature.[117]

All men seek happiness but he alone is truly happy who thirsts after and attains to a measure of true justice.[118] Perfection in this life consists in possessing according to our capacity at the time the true good and always willing to possess more of good.[119] The one measure (horos) of perfection is that it is without measure;[120] to encompass perfection in virtue is impossible, for if it has defined limits it is not virtue.[121] And virtue which is according to Godliness is twofold: one towards God to know Him, and the other, upright conduct;[122] and there is no fixed limit to either of these; the further we progress in virtue, the greater becomes our capacity to know God by contemplation. The degree of contemplation reached is but the beginning of a deeper grasp of divine things.[123] And contemplation is not simply to look on God and divine things but it is a loving gaze fixed on divine truth. It is not abstract consideration of the things of God but the lifting up of the purified soul to a sublime love of the divine truth and of the beauty which it possesses. The soul never stands still in its love; urged on by its desire, it constantly strives for a more intimate union with its beloved. The union of the soul and God by contemplation always touches the heart; it is not only mental vision but a loving embrace.[124] Contemplation and a virtuous life go hand in hand and neither avails for perfection without the other; contemplation alone by itself does not perfect the soul unless there be present also works which issue in a good moral life; neither does a practical philosophy suffice unless true holiness lead the way.[125]

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[111] *In Cantica Canticorum* 11, PG 44, 1009A-1012C. Cf. In Ecclesiasten, 7, PG 44, 729B, 731C; *De Beatitudinibus* 6, PG 44, 1268B ff. The notion (hypolêpsis) of the divine is in all men by nature 5, 1249D.

[112] *Contra Eunomium* 5, PG 45, 681BC. For the superiority of faith over reason cf. *op. cit.* 12, 941AB.

[113] *In Cantica Canticorum* 11, PG 44, 1014C.

[114] *Contra Eunomium* 7, PG 45, 744C.

[115] *Op. cit.* 4, PG 45, 653BC. St. Gregory is arguing against the reasoning of Eunomius.

[116] *In Cantica Canticorum* 11, PG 44, 1013A-C: *De Beatitudinibus* 6, PG 44, 1273BC.

[117] *Op. cit.* 13, PG 44, 1048BC.

[118] *De Beatitudinibus* 4, PG 44, 1233BC.

Up to a certain point we can know God by reason from the existence and beauty, order and power of the universe. We gain a firmer and fuller grasp of God by faith through the Holy Scriptures which reveal Him, especially through the Gospel which is the record of the life, doctrine and works of the Incarnate Word. The knowledge of God gained from consideration of external nature does not reveal His nature, but only some of His perfections, His power, and beauty and goodness and these only imperfectly. And while the inspired Scriptures tell us great things about His transcendent nature, yet what is all this when compared to His nature in itself? For they reveal God to us not in His fullness of being but according to our capacity to grasp.[126] A more intimate knowledge of God, a deeper penetration into all we are taught of God by faith is gained from contemplating Him as He is united to us and dwells in us in the image of our own soul wherein we can behold the reflections of His divine attributes and in that sense the deity itself: "You[127] (O soul) alone have been made a copy of the nature which transcends all understanding, the likeness of imperishable beauty, the impress of the true deity, the vessel of the blessed life, the expressed figure of the true light beholding which you become what it is, imitating that which shines in you from your own purity through its reflecting splendour." There is here not only the vision of the attributes of God in the image of the purified soul, but a union with the deity which the soul possesses by possessing the attributes as they are reflected in the soul.

In integrating the catharsis-image-mirror theory into his mystical theology, St. Gregory changes the emphasis from catharsis to the mirror aspect; he goes a step further in developing his thought that the soul by seeing the reflected deity in the soul becomes united with it, in a sense, becomes the attribute of God it contemplates and so the deity: "Just[128] as in the case of things contrary to each other by nature, the absence of one becomes the subsistence of its contrary, so, as we are endowed with free-will, it is in our power to be conformed to whichever we choose; quite properly then the word (logos) says to her who has become beautiful: by withdrawing from communication with evil, you have approached me and by drawing near to the inaccessible beauty, you have yourself become beautiful and like a mirror become conformed to my character. For like a mirror man is transformed (metapoioumenon) to accord with the reflections (emphaseis) of its choices." Just as a mirror becomes beautiful as it reflects a beautiful object, so with the soul. The weak point here is that it is not the mirror but the reflection in it that is made beautiful. St. Gregory goes further still in expounding the vision of God in the soul which is not only beyond the power of speech but is beyond the ability of the mind to express through concepts: "The[129] soul that is led by the hand through such concepts to the grasp of what is incomprehensible must by faith alone bring that Nature which is above all comprehension to dwell in him." Here the catharsis-mirror theory is dropped and God known by faith enters the soul and reveals Himself in a manner that is above power of speech and mental concept. Here we have doctrine which is more familiar to us; God as the object of faith is the term of the spiritual life. The same thought is expressed in the following passage: "Those[130] who draw near to God must leave behind the knowledge about God which they have derived from reason as not rising to the object of one's desire, and use faith; there is no other way to draw near to God than that faith act as mediator and by itself join the mind in its quest to the incomprehensible nature." And in his theological exposition of the progress of the soul in sanctity, this is the more common line of exposition with St. Gregory. The soul, purified and established in virtue through the operation of the Holy Ghost gains a deeper insight and appreciation of the truths of faith regarding God, and this more intimate knowledge of God is accompanied by a higher degree of love. The function of catharsis, of purification, is to prepare the soul for reaching a higher degree of union with God. But there is a higher and clearer vision of God still experienced by chosen souls.

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[119] *De Vita Moysis*, PG 44, 301C. Cf. *In Cantica Canticorum* 5, PG 44, 941BC, also 1000AB.

[120] *Op. cit.*, 300D.

[121] *Op. cit.*, 301A.

[122] *Op. cit.*, 377C.

[123] *In Cantica Canticorum* 8, PG 44, 941BC; Cf. *op. cit.*, 772AB, 773BC, 776C, 777C, 784AB, 1037BC. Cf. G. Horn, *L-Amour divin. Note sur le Mot 'Eros' dans S. Grégoire de Nysse.* (Revue de Ascétique et de Mystique VI, 1925) pp. 378 ff.

[124] *Op. cit.* 13, PG 44, 1048CD.

[125] *Loc. cit.*, 1057B.

[126] *De Beatitudinibus* 7, PG 44, 1277D.

[127] *In Cantica Canticorum* 2, PG 44, 805D.

[128] *Op. cit.* 4, PG 44, 833AB. Cf. *De Beatitudinibus* 6, PG 44, 1272 BC.

Some who are to be spiritual leaders in the mystical life are, like Moses, raised up to a fuller and higher perception of the mysteries of God. They enter into the divine darkness, wherein they not only do not use any sense knowledge but also not any knowledge which the human mind can of itself acquire regarding God. In this divine darkness the soul sees God. But it does not even there reach a full and perfect vision of God's Being; it sees while it does not see for the One sought (to zêtoumenon) is above all knowledge being enveloped in incomprehensibility as by a darkness. Wherefore the sublime John who had experienced this bright darkness says: *No one has seen God at any time*, defining by this denial that the knowledge of the divine essence (ousia) is unattainable not only by men but by any intellectual nature.[131]

Some souls are raised at times to a state of ecstasy such as David, St. Paul and St. Peter experienced. Such souls go out of themselves, are so to speak asleep to the operation of the senses and find their delight alone in the contemplation of that which is. Through sheer and pure mind they receive the apparition of God through their heavenly wakefulness and behold the invisible Beauty.[132] It is a moot question whether or not for St. Gregory God reveals Himself directly to a soul in ecstasy; texts can be cited from his works to support either position.

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[129] *Op. cit.* 3, PG 44, 821AB.

[130] *Contra Eunomium* 12, PG 45, 941BC.

[131] *De Vita Moysis*, PG 44, 376C ff.

[132] *In Cantica Canticorum* 10, PG 44, 989B ff.

In conclusion, let us say that from what we have considered of his thought St. Gregory interprets the image of God in man as the perfections, natural and supernatural, with which He endowed man's nature from the beginning. Through sin this image has been obscured, covered over with rust or mire. By the process of catharsis, man through freely choosing the real goods against apparent goods, that is by practising virtue, cleanses the soul of this accretion of sin and restores it to its former splendour. In this restored image, man can behold the perfections of God which are but imitations of the divine attributes. In his earlier works all this is largely on a natural, a philosophical level. It is true that in them, St. Gregory holds that God's endowing man with imitations of His attributes by implanting the virtues in the image in man is a gift of God above the power of man and above the requirements of man's being as man. But in the *De Virginitate*, *De Hominis Opificio* and *De Anima et Resurrectione* there is scarcely a text, with one exception,[133] that would indicate the need of grace in the process of catharsis, of man's restoring the splendour of those virtues which had become obscured by the accretion of evil. The role of grace is not worked in these treatises into the web and woof of his exposition. Why did Gregory, a bishop, write philosophical treatises on Christian themes? He certainly knew St. Paul at the time. Some say that the *De Virginitate* is an attempt on the part of St. Gregory to write a *Phaedo* on a Christian topic. Be that as it may, in these treatises he is primarily a philosopher, not a theologian. In his later years, when he had matured not only in knowledge of his Faith[134] but also in personal holiness, he composed his ascetical treatises, wherein he attempts to expound this catharsis-image-mirror theory on a supernatural level. This he does by explaining sanctification not only in terms of free-will but also of the working of the Holy Ghost in the soul, not, however, in terms of the role of the *gratia Christi*. His great dogmatic work *Contra Eunomium* was on the Trinity, especially on the Divinity of the Son and of the Holy Ghost. Pelagianism had not yet arisen to bring his study, attention and writing to an exposition of the necessity and efficacy of grace. He wrote as he knew; he was more conversant with the aspect of sanctification of the soul as the working of the Holy Ghost than as the influence and operation of the grace of God merited by Christ's death.

Into this exposition of mysticism, St. Gregory tries to integrate his catharsis-image-mirror theory. But his attempt does not prove too successful. He fails to bring out the positive aspect of virtuous action proceeding from the supernatural principle, grace, and further, the image theory falls down in this that the image is not destroyed but only obscured by sin:[135] it is there all the time under

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[133] *De Virginitate* 1, PG 46, 319C.

[134] It might be well to recall that St. Gregory was in his early years by first choice a rhetorician. For a time he abandoned the office of lector to take up teaching rhetoric. His chief teacher in his early formation, as he tells us, was his older brother, St. Basil. He did not go to higher seats of profane learning such as Athens. He was not a bishop of great administrative ability nor a man of external activity; he liked retirement and opportunity for study and writing. That he succeeded in rapidly schooling himself in Christian thought is evidenced by the fact that he was one of the influential theologians at the Council of Constantinople in 381, and that Theodosius decreed also in 381 that only those Sees in *diocesis Pontica* which held communion with bishops Otreius, Helladius and Gregory of Nyssa were to be considered orthodox by the state.

[135] There is nothing clearer in the writings of St. Gregory. His whole theory of catharsis is built upon it. There is one text in *De Virginitate* 12 (PG 46, 371B) where he says that man thrust headlong into the mire of sin lost (apôlese) his being the image of God but the word even here can mean only ruined, disfigured, made to disappear, for the words just preceding are: "Man fell from his dignity like those who fall in the mire and having their face plastered over with mud are not recognized even by their comrades."

St. Gregory probably knew, if he did not use, the passage in Origen on this point. Origen in his thirteenth homily on Genesis as we find it in the translation of Rufinus (Die Griechischen Christlichen Schriftan accretion of rust, of mire of sin. Further, to bring about the union of the soul with God by contemplation of the imitations of God's attributes in the soul he makes two jumps, one is that he does not retain the distinction *secundum rationem* between God's attributes and His being, and secondly that by contemplating the reflections we look at and become the object reflected.

There is in St. Gregory's later works a mystical theology. But even in these works, he is possessed too much by philosophical thought and terminology which he does not succeed in Christianizing. To try to organize his thought so as to make it fit in with the mystical theology of later centuries makes it necessary to read into his terms what is not *prima facie* there.[136] And further to try to build up such a theology by drawing upon all his works promiscuously, whether early or late, whether primarily philosophical or theological, requires an adroit sifting and selection of texts and all too often an interpretation which wrenches the very meaning of words.

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steller der ersten drei Jahrhunderte 6, p. 119; PG 12, 234D) says: Imago eius obscurari per incuriam potest, deleri per malitiam non potest. Manet enim semper imago Dei in te, licet tu tibi ipse superinducas imaginem terreni.

M. Daniélou (*op. cit.*) makes the image the equivalent of sanctifying grace and so insists that St. Gregory taught that the image was destroyed by sin.

[136] M. Daniélou in arguing that the image is equivalent to sanctifying grace would prove too much. For St. Gregory insists emphatically that reason and free will are embraced in the image. M. Daniélou also makes *apatheia* the life of grace, and *kathorotes* in God, the divine life; and of catharsis he says: celle-ci devra être comprise beaucoup plus comme la communication d'une grâce divine que comme l'élimination d'impuretés terrestres. Cf. pp. 102-105.

The exposition of the process of sanctification by using the distinction of the 'Three Ways' which is found in some writers on the spiritual life in later centuries is foreshadowed but not expressed in the works of St. Gregory. I do not find such a distinction in his works, although he does mark several degrees of holiness as is clear from passages quoted above. But he does not develop his mystical theology by that plan. His works show that perhaps it was in his mind in embryo, but it never reached the state of full formation.

Geographical and Ethnic Names in the *Nibelungenlied*[*]

FRANCIS P. MAGOUN Jr.

I. *FOREWORD*

THE lack of a systematic analysis of the geographical and ethnic names in literary documents is particularly missed in the case of mediaeval works in which peoples, geography, and travel are conspicuous. Such, for example, are Geoffrey of Monmouth's *Historia Regum Britanniae* and its vernacular descendants,[1] the Old-Norwegian *Thiðreks saga*,[2] the writings of Geoffrey Chaucer, and the Middle-High-German *Nibelungenlied*. The present paper aims to do something of this sort for the great MHG epic.

Although as transmitted to us it is a composition (*ca.* 1205) of the feudal age and in form as well as substance bears countless marks of that age, few will question the opinion that the *Nibelungenlied* (*NL*) is by long odds the most distinguished single poetic monument of what we may properly call the Old Germanic peoples.[3] The mythological and heroic lays in the Icelandic anthology *The Elder Edda* differ too greatly from one another in date of composition, in purpose, and in tone, to admit of any real comparison with the monumental Middle-High-German epic. The *NL* towers, indeed, like a colossus above its earlier West-Germanic rival, the Old-English *Béowulf* (*ca.* 700), as it does above the ninth-tenth century Germano-Latin *Waltharii poësis*.[4] Such slightly later MHG poems as the *Kûdrûn* and the various works dealing with Dietrich of Bern, Hugdietrich, and Walter of Aquitaine, lack the high art and grandeur of the *NL*.

Thus, it is little wonder that the *NL*, after its rediscovery in 1755, soon became the center of a great amount of study, intensive and extensive, ranging from consideration of individual words, of manners and customs, and of beliefs and attitudes, to its literary historical background, character analysis, and aesthetic appraisal—that it has, in a word, long been under the microscope of the philologist and critic.[5] As a great national document the *NL* has, furthermore, been an inspiration to many generations of Germans, laymen and artists,[6] and is likely to remain so. It has been widely read and admired abroad, where, perhaps not altogether fortunately, it commonly serves as a *corpus vile* for an introduction to the MHG language and literature.

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[*] To John Albrecht Walz, professor emeritus, Harvard University, who in 1922 introduced me to the *Nibelungenlied*.

[1] Here considerable progress has been made by Dr. Roland Blenner-Hassett in his unpublished Harvard doctoral diss. (1940), *A Study of the Place-Names in Lawman's Brut*, in which a large number of the names occurring in Geoffrey, also in Wace, are dealt with.

[2] The place-names in *Thithreks s.* are being studied by William J. Paff of Yale University in preparation of a Harvard doctoral dissertation.

[3] W. P. Ker, *Epic and Romance* (2d ed., London, 1908), p. 179, comments to this same general effect. For bibliography and general discussion of *NL* see Gustav Ehrismann, *Geschichte d. deutsch. Lit. bis zum Ausgang des Mittelalters*, Pt. II, Schlussband (Munich, 1935), 123-143, also "Nachträge," p. 691.

[4] Cf. See further Ker, *op. cit.*, pp. 119-20, esp. p. 120: "The *Iliad* and the *Odyssey* are themselves episodic poems; neither of them has the reach of the *Nibelungenlied*", and Fr. Klaeber, *Beowulf* (3d ed., Boston, 1936), p. cxix (bottom): "*Beowulf* is not an English *Iliad*, not a standard Germanic or national Anglo-Saxon epos. In respect to plot it is immeasurably inferior to the grand, heroic *Nibelungenlied*." For a new and novel discussion of the date of the *Waltharius* see Karl Strecker in *Deutsches Archiv f. Geschichte des Mittelalters* IV (1941), 355-81; English translation Smyser-Magoun 111-145.

[5] For a useful survey see Mary Thorp, *The Study of the Nibelungenlied, being the History of the Study of the Epic and Legend from 1755 to 1937* (Oxford, 1940).

[6] For an imposing list of "Adaptations of the Nibelungen Legend," of which many though by no means all derive from *NL*, see Thorp, *op. cit.*, pp. 189-190.

Despite the deal of loving care devoted to the interpretation and appreciation of *NL*, there still remains one most curious lack, for which recent scholarship is, perhaps, collectively to blame, namely, an up-to-date edition in which the reader and student can find summarized and conveniently disposed the results of research and criticism at present scattered through many and diverse publications of, let us say, the last half-century. In a word there is for *NL* nothing comparable to Friedrich Klaeber's classic edition of the OE *Béowulf*. The accomplishment of a parallel achievement on behalf of *NL* is clearly a challenge for the coming generation of Germanists.

The task of such an editor will, as I have implied, be in large measure that of arranging properly and conveniently the work of his predecessors and fellow-workers in the vineyard. Early in his undertaking he must, *inter alia*, plan for some adequate treatment of matters geographical and ethnographic. In some respects the *NL* is almost a travel poem; at all events many of the characters are much on the move, in one way or another criss-crossing Germany[7] and, from time to time, passing its frontiers by sea or land to visit Iceland and Norway,[8] also Hungary.[9] In addition to localities directly connected with the action are others of a more incidental or more decorative nature.[10] About many places much specific information, often architectural, is furnished; in some instances this material is scattered though the poem in a fashion not favorable to the immediate formation by the reader of the rounded picture that actually exists. Similarly with the peoples, Germanic and other. By and large, geography and ethnography are highly significant constituents of, and ornaments to, the narrative.

In the form of an index the present paper aims to present the reader of the *NL* with a readily assimilable picture of the places and peoples mentioned, also certain linguistic information, such as the etymology where known and the formation of the name in question. Without violating the spirit of the wise adage *il ne faut jamais médire de ses prédecesseurs*, one may, I think, reasonably observe that no existing work—at least none known to me at the time of writing—gives such a picture or even permits of its construction. At best one is given a meagre, not always quite accurate definition that tells little and leaves the place or the tribe in dull focus. I should like to think that I was in small part helping to do for a future editor of the *NL* what the late Erik Björkman so admirably did for editors of the *Béowulf* in his *Studien über die Eigennamen im Béowulf* (Halle, 1920).

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[7] The route between Xanten (*Santen*) and Worms (*Wormez*) is traversed by Sîvrit and others in cantos iii, xi, xiii, by Gêre in canto xii, and by Sigemunt in canto xviii. In canto iv Sîvrit journeys from Worms to Saxon territory and back.

[8] Journeys between Worms and Iceland (*Islant*) are described or implied in cantos vi, vii, ix, x. In canto viii Sîvrit visits the land of the Nibelungs, evidently thought of as living in Norway.

[9] Journeys between Worms and Etzelnburg are important and figure in cantos xx, xxiv, and xxv-xxvii. This long stretch of well over 800 km. or 500 m. is the "Nibelung Route" of literary-historical parlance (see *Strâze* III and *Wege*) and has been much studied, most recently by Karl Weller in *ZfdA* LXX (1933), 49-66, with references to earlier work. See also Tonnelat 328 ff. ("La *Chanson des Nibelungen* et la Route du Danube'), and p. 384, §VII ("La localization de la légende épique").

[10] Rather incidental are the names of the Slavic and Balkan peoples allied with Etzel: *Kiewe*, *Kriechen*, *Petschenœre*, *Pœlân*, *Riuzen*, *Walachen*, while a number of names used only as epithets of persons serve only a decorative function: *Alzeye*, *Berne* (*Bernœre*), *Metze*, *Spân(j)e*, *Spîre*, *Tronege* (*Tronegœre*). Finally I mention a number of places, mainly oriental, mentioned as the source of precious wares: *Arâbî(n)* (*arâbîsch*), *Arras*, *Azagouc*, *Indîâ*, *Lybîân*, *Marroch*, *Ninnevê*, *Zazamanc*. For help on *Arâbî* and *Ninnevê* I am most grateful to Prof. R. H. Pfeiffer, on *Marroch* to Prof. Wm. Thomson, both of Harvard University.

The sharp, architectonically almost oversharp division of the narrative of the *NL* into two parts (cantos I-XIX and XX-XXXIX) finds its match in the geography and ethnography. As a whole the poem may be viewed as centering on Worms (*Wormez*) and the Burgundian kingdom (*Burgonde*, etc.), but whereas pt. i faces west, pt. ii looks east. The Rhine (*Rîn*)—here very much "Deutschlands Strom, nicht Deutschlands Grenze" of E. M. Arndt—is a tie that binds rather than a barrier that divides west and east; it unites, as it were, pts. i and ii.

The essential action of pt. i takes place in the cathedral town of Worms, where Sîvrit meets, wooes, and weds Kriemhilt, and where he is buried, and in whose environs (*Waskenwalt*) he meets his end. The Rhine serves as an arterial highway, then as now, between Sîfrit's home in Xanten (*Santen*) and Worms, as a stage on the route to Iceland (*Islant*) and to Saxon territory. The peoples are Netherlanders, Burgundians, Saxons, Danes, Icelanders, and Nibelungs (in pt. i not identified with the Burgundians). Generally speaking the geography of pt. i is less detailed than that of pt. ii with its large collection of names of places, often small, lying east of the Rhine and mainly in the Danube valley, also Balkan and Slavic peoples mentioned as allies of Etzel, Hunnish king. This rather obvious difference may fortify the thought that the author did not personally know the Rhine valley, had perhaps never been as far west as the Rhine at all (note esp. *Waskenwalt*, below). In this connection one may observe that the mass of detail given about Worms need signify nothing but the poet's ability to clothe this ancient site in a conventional garb. After all, the poet Chaucer was quite able to provide an abundance of similar information about ancient Troy. Indeed, nowhere is there evidence of the *NL* poet's being interested in having his work serve even incidentally as a Baedeker's guide-book, clear though it be that in general he set considerable store by his geographical indications and wrote with a coherent geographical picture in mind.

In preparing the present paper I have used Helmut de Boor's recent revision (Leipzig, 1940) of Karl Bartsch's edition of the *B*-text;[11] I have also included from the *C*-text *Lôrse*, *Pledelingen*, *Otenheim*,[12] *Otenwalt*, and *Treisenmûre*.

Under the 112 entries now following in alphabetical order is given first a modern identification where this is possible, often with a reference to Andree's *Allgemeiner Handatlas* and to a Baedeker's guide-book. Then ordinarily follow the places of occurrence in the poem (indicated by stanza, and line within the stanza)[13], together with some discussion of, or observations on, the occasions of these same references. Finally a brief etymological note. For a key to the abbreviations, see § III, pp. 135-138, below. In the map on pp. 110-111 I have ventured to unite in a measure poet and cartographer—often a risky procedure.[14]

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[11] Among the words and names discussed below the following differences between Bartsch and de Boor may be noted: heading to canto viii, Bartsch *wie Sîvrit nâch den Nibelungen sînen recken fuor*, de Boor *wie Sîfrit nach sînen mannen fuor*: 747, 4 Bartsch *ûzer Burgonden lant*, de Boor *û. Guntheres l*; 827, 4 Bartsch *ze kirchen*, de Boor *zem münster*; 1116, 3 Bartsch *von Nibelunge lant*, de Boor *von Nibelunges lant*; 1345 Bartsch *Tenemarke*, de Boor *Tenemarken*; 1525, 1 Bartsch *Swanevelt*, de Boor *Swalevelt*; 1836, 3; 1973, 2; 1974, 1 Bartsch *tür* etc., de Boor *turn* etc.; 1903, 1 Bartsch *Berner*, de Boor *Bernœre*; 1952, 1 Bartsch *vor dem gademe*, de Boor *zuo dem degene*; 2074, 1 Bartsch *Dürenge*, de Boor *Düringe*: 2079, 3 Bartsch *hûse*, de Boor *türen*; 2333, 1 Bartsch *gademe*, de Boor *hûse*.

[12] Due to the exigencies of what one may perhaps still call "war-time" printing it has not been possible to secure accented capital letters, hence no key-word can show the MHG circumflexed vowels. In general the correct spelling appears in the body of the text except in the case of *Isenstein*, *Islant*, and names in *Oten-* and *Oster-* with their circumflexed initial vowels.

[13] I would take this opportunity gratefully to thank Mr. J. C. Wells of Harvard University for invaluable help in verifying the many line-references in Ms.; for such errors as may occur in print I alone am responsible.

[14] For judicious caveats against excesses in this direction see A. H. Gilbert, 'Can Dante's Inferno be exactly Charted? *PMLA* LX (1945), 287 ff., esp. p. 306, last paragraph.

II. *INDEX OF GEOGRAPHICAL AND ETHNIC NAMES*

ALZEYE, Alzey on the Selz R. (Rhine-Hesse), 23 km. NW of *Wormez* on the railway line from Worms to Bingen (Andree 66B5; Baed. *Rh.* 378); mentioned in 9, 4 to identify Volkêr in terms of his home or fief and thus, like *Berne*, *Metze*, and *Spîre*, serving a purely decorative function in the geography of the poem. It is generally agreed that stz. 9 containing this name in the *B*-text derives via *C* from *Diu Klage* (Heusler 256); cp. Hempel 12, 19. For accounts of this very old settlement (*inter alia*, a Roman castellum) see articles in *Volk u. Scholle*: *Heimatblätter f. beide Hessen, Nassau u. Frankfurt a. Main*, V (1927), dedicated to the history of the town, esp. Heinr. Becker, 'Aus Alzeys vergangenen Tagen,' pp. 163-166; Kauffmann II, 104, n. 4; 306, n. 2. On Volkêr in connection with Alzey see *Volk u. Scholle, cit. supra*, pp. 205 ff.; Lichtenberger 266-269; Tonnelat 194-195; Heusler 256; Dehio *SWD* 10, on the local church.

The oldest representatives of the name are *vicus Altianiensium*, *Altiaia*, *Altiaium*. See further Oesterley 19; F-J I, 117, II, 1486; Holder I, 109; Sturmfels 3; Sturmfels EL 6; the name would appear to be Celtic, perhaps to be associated with OIr *alt* "height" (see WP I, 86, with the additional meaning "shore" "bank", and cp. Gröhler I, 124) or *alt* "wooded valley"; Holder I, 110 would associate it with a stem *alto-*, corresponding to OIr *alt* "joint" "limb". If the place-name is original, some toponymic word presumably lies behind it; if, however, the place-name is derived secondarily from a tribal name, Holder's suggestion deserves consideration, with its implication of a tribal name meaning "the (big) limbed, strongly built people."

AMELUNGE, st. m. pl. of MHG *Amelunc*, lit. "members, descendants of the (Gothic) family of the *Amali*," dynastic name of the Ostrogoths. In MHG poetry, in which **Gozze* or the like does not occur, *Amelunge* is the standard designation of the Ostrogoths of Italy (cp. *Bernœre*), ruled by Theoderic the Great (Dietrich of Bern of poetry and legend); see further Heusler in *Reallexikon* I, 77-78, under "Amelunge," and note numerous *Amelung-* names in Oesterley. Mod. Germ. *Got*(*h*)*e* is post-mediaeval and learned, based on Graeco-Lat. *Got*(*h*)*i* (Schönfeld 120-123). The dynastic name *Amelunge* occurs in 1981, 3 and 2247, 1 in the phrases *künic, vogt der Amelunge* with reference to Dietrich, more often described as *von*(*e*) *Berne* or as *Bernœre* (see below): here and in composition this may be rendered by "Goths" "Ostrogoths," though literary-historical convention would no doubt justify "Amelungs" on the part of the translator, despite the fact that this term is not used today in historical parlance.

The first element of *Amelunge*, *Amel-*, represented in Lat. *Amali*, n.pl. (Goth. **Amalôs*) and in the first element of many Goth. proper names (Schönfeld 14-17), is based on a Goth. adj. **amals* "bold" "brave" "vigorous" (see Ferd. Holthausen, *Got. etymolog. Wtb., s.v.*); the same element occurs in *NL* in the personal name *Amelrîch*, an exile in *Gelpfrâtes lant* in Bavaria (cp. Goth. *Amalaricus*, Schönfeld 15). Cp. *Amuling Théodrîc*, Mezger 2. On the *-ung* suffix of appurtenence in the formation of dynastic names see Kluge *Stbldg.* 14 §26b, esp. n. 1 §26c. On the strong inflection of *Amelunc* see Paul-Gierach 105 §134. For further references and discussion see Heusler, *art. cit.*; Metzenthin 127 "Ömlungaland;" WP I, 179 (top).

AMELUNGE-LANT, n., lit. "land, domain of the *Amelunge*," designates the Ostrogothic kingdom of Dietrich (Theoderic) in northern Italy, of which Verona (*Berne*, below) was in contemporary tradition conceived as the chief town;

Amlunga-, *Ömlungaland* of *Ths.* It is mentioned in 1721, 2; 1983, 3; 2279, 2; 2322, 4; 2334, 2, to identify as Gothic various of Dietrich's retainers residing in unhistorical exile at Etzel's court; for this name outside of *NL* see Matthias 47-48. It is used synonymously with *Amelungen, q.v.* On the underlying dynastic name, see under *Amelunge*, above, and on this type of determinative compound see under *Burgonden-lant.*

AMELUNGEN, "(land of the) Amelungs," "Amelungia" as it were, and synonymous with the more common *Amelunge-lant.* It is mentioned in 2259, 1 to identify the Ostrogothic warrior Wolfwîn.

Formally *Amelungen* is d. pl. of *Amelunc* (see under *Amelunge*); on this use of the d. pl. see under *Burgonden.*

ARABI, ARABIN, lit. "Arabia" (Germ. *Arabien*), the Arabian peninsula in SW Asia, mentioned in 576, 3 and 833, 2 as a source of fine woolen stuff (*pfelle*); similarly *Azagouc*, *Lybîâ*, *Marroch*, *Ninnevê*, *Zazamanc*; cp. also *Indîâ*, introduced in connection with precious stones, and the non-oriental *Arraz* for textiles. In the Middle Ages, here as elsewhere, Arabia (Araby) would seem often to have been applied to more than the Arabian peninsula and at times to have included the Near East in general; hence, though Arabia proper served as a trade link between the East and the West, to the poet of the *NL* the name as used here may well have suggested such great and famous non-Arabian trading centers as Bagdad (renowned for silks), Basra, Damascus, and Mosul (*Ninnevê*). See further *arâbîsch*, adj.

Looking back ultimately to Lat. *Arabia* (cp. Gk Ἄραψ, an Arab), MHG *Arâbî* is probably based on OFr *Arabi* (see Langlois under "1. Arabe," esp. p. 41); *Arâbîn*, like *Lybîân*, would seem to be a partial conformation to Germ. regional names in *-en* (see under *Burgonden*). The name used for the Arabian Bedouins appears in the Hebrew Old Testament as *ʿarâb*, in Arabic as *ʿarab*, and in Assyr. as *Aribu*, *Arabu*, *Arubu*; this has been associated with Heb. *ʿarâbâh* "steppe" (50 Egli 47: "das Land der Steppen u. Wüsten"), though this toponymic word may well be derived from the ethnic name (so Fritz Hommel, *Ethnographie u. Geographie des alten Orients* [Munich, 1926], p. 568, n. 4); on the learned character of OFr *Arabi* see Schwan-Behrens 113 § 191, note.

ARABISCH, adj., lit. "Arabian" (Germ. *arabisch*), "pertaining to Arabia", as defined under *Arâbî(n)*. This adj. is used in 362, 1 and 1825, 3 to describe silk, in 366, 1 to describe gold, of which in Biblical times at least Arabia enjoyed a reputation of great wealth; cp. *Gen.* ii, 11: "the whole land of Havilah (*Vulg.* Hevilath), where there is gold," on which see Eduard Meyer, *Die Isrealiten u. ihre Nachbarstämme* (Halle, 1906), pp. 325 ff.

On adj. in *-isch* formed from place-names and ethnic names, the former commonly without *i*-umlant, see Kluge *Wtbldg.* 39-40 §56; Kluge *Stbldg.* 104 §210; Curme 420-421 §10; and cp. *hiunisch*, *tiusch.* In *arâbîsch* a reduced form of the suffix, *-sch*, is added directly to *Arâbî*, hence *-îsch* vs. normal *-isch.*

ARRAZ, Arras in Artois at the confluence of the Scarpe and the Crinchon, dep. Pas-de-Calais, France (Andree 89 B 2), in the days of the *NL* poet in the Kingdom of France and an episcopal see; it is mentioned in 1825, 1 as the source of fine fabrics (*pfellel*) and in the same breath (1825, 3) with Arabian silks; this town in the north of France was early famed for its manufacture of fine woolens. For other places, all oriental, mentioned in *NL* as a source of silks and textiles see *Arâbî(n)*. For this place-name as the source of MHG *arraz*, etc., mod. Germ. *Arras*, m., "a light woolen texile" see Kluge-Götze *s.v.*, also *NED* under "arras" for English uses. Arras is frequently mentioned in the Fr. chansons de geste (Langlois 48).

Arraz looks back to the Gaul. tribal name *Atrebates* "the settled people" (Holder 1, 268-270; WP I, 757, '*treb-*') replacing the Celto-Roman name of this locality: *Nemetocennum*, *Nemetacum* (*Atrebatum*) of *IA* 379, 3 (important route-junction). See PW 33. Halbb. (1933), col. 2381-82, under "*Nemetacum*;" Longnon 103 §413; Gröhler I, 89. Behind late OE *Aðerats* (Magoun, *Mediaeval Studies* II, 248 §75), the OFr forms, and MHG *Arraz*, lie Carolingian forms of the type *Adradis*; see Ettmayer, *ZONF* II (1927), 183.

AZAGOUC, a locality mentioned in 439, 2 as a source of silk (*sîde*); see under *Arâbî* for other names introduced in similar connections. *Azagouc*, like *Zazamanc* (*q.v.*), was surely taken by the *NL* poet from Wolfram v. Eschenbach's *Parzival*, where it occurs three times. This strange name not impossibly became attached—with considerable distortion—to the Perceval story through Gaius Iulius Solinus's third-century geographical compliation *Collectanea rerum memorabilium*, where in ii, 30, 3 mention is made of the *Azachaei*, i.e., *Asachaei*, a people settled on the Upper Nile, perhaps to be identified with the Abyssinians; see PW 4 (1896), col. 1514. On the *Parzival* connections see Ernst Martin, ed., *Wolframs v. Eschenbach Parzival u. Titurel*, II: "Kommentar" (Halle, 1903), p. 29, n. to 16, 2; also Samuel Singer, 'Wolframs Stil u. der Stoff des *Parzival*', Vienna Academy, *Sitzungsberichte*, phil.-hist. Kl., Vol. 180 (Vienna, 1916), 4th art., pp. 50, 107; Körner 29; Droege *ZfdA* LXII (1925), 193-194; Heusler 166.

BECHELAREN (*BURC*, *STAT ZE*), Pöchlarn at the confluence of the Erla(u)f and the Danube (*Tuonouwe*), Lower Austria. Andree 77 D 1; Baed. *AH* 134 (map, 132-133). It is mentioned: (I) as the residence of Margrave Rüedeger (cp. *Rüedegeres lant*) in 1160, 1; 1163, 1; 1164, 1; 1165, 1; 1174, 1; 1318, 2; 1321, 4; 1327, 1; 1424, 1; 1496, 1; 1642, 1; heading to canto xxvii; 1705, 4; 1709, 4; 1712, 2; 1875, 2; 2164, 4; 2314, 4; it is also referred to indirectly as *ze hûse* in 1646, 4; 1647, 2; 1648, 2; (II) as an epithet to describe Rüedeger himself (*von Bechelâren*) or his follows (*die von Bechelâren*) it is used in 1147, 3; 1181, 2; 1183, 3; 1231, 1; 1278, 1; 1309, 1; 1317, 2; 1998, 3; 2197, 4; 2210, 2; 2213, 1; 2224, 4.

Bechelâren is a *stat* (1165, 1) or *burc* (1318, 2; 1662, 1) on the highway paralleling the Danube (see *Strâze* III, below, esp. 1496, 1; 1639, 1, and cp. 1712, 3-4), the Nibelung Route. It is said to be a twelve days' journey to the Rhine, i.e., to Worms (1175, 1) via Bavaria (1174, 3). Rüedeger's spacious palace (*palas wîten* 1320, 2) overlooks the river (*dâ diu Tuonouwe unter hine vlôz*, 1320, 3); mention is made of the exterior walls (*mûre*, 1318, 1), also of windows (*venster* 1318, 1; 1711, 1); there is a gate (*tor* 1693, 1). The great hall (*sal*) is referred to in 1668, 1 (*wît*); 1671, 3 (*wît*), 1673, 2; 1694, 2, and indirectly as *ze hove* in 1651, 3; 1680, 2; 1703, 2; one of the interior walls (*want*) is mentioned in 1698, 3. Gotelint's and her daughter's room is *kemenâte* (1649, 4; 1687, 2), the treasury or treasure chamber is *kamer* (1173, 1). Quarters, probably outside the palace and intended for guests, are *herberge* (1645, 4), so perhaps the pavillions (*hütten*, 1660, 1), set up on an open space near the palace (*velt* 1655, 2; 1660, 1). On the existence of *Bechelâren* in the old *Nôt* see Heusler 201.

Bechelâren (Pöchlarn, earlier also Pechlarn) is formally a d. pl., composed of the pl. (combining) form of OHG *bah*, MHG *bach*, st. m. "brook" (mod.

Bäche) + the toponymic element *-lâr* "area free of forest" and thus means "settlement in a area free of forest and watered by brooks." *Bakalár* of *Ths.* (cp. Schneider I, 95), unless a mere blunder, may reflect an unumlauted pl. of MHG *bach*. *P-* for *B-* is characteristically upper German; on the rounding of e to ö cp. Paul-Gierach 28 §27, 4, esp. for words thus rounded that have established themselves in the standard language; here it is perhaps to be viewed as dialectal; cp. also *Vergen* (Pföring), below. For forms see Oesterley 529; F-J II, 478; on the much discussed element *-lâr* see Helbok 46-47 and J. Schnetz, "Die Lösung des *Lâr*-Problems," *ZONF* XIII (1937), 110-112, where earlier literature is cited. F-J's identification, echoed by Weinberg 67; Steinhauser 26, of the name with OHG *peh* (*beh*), n., MHG *pech* (*bech*) "pitch" and interpretation as "the pitchmakers' place" or the like (as if from mod. Germ. *Pechler*, MHG *bëcherer*) is inacceptable. On the determinative phrase *ze Bechelâren* see under *Wormez*.

BEIERLANT, see *Beyerlant*.

BERNAERE, m., inhabitant of Verona (*Berne*), Italy, used (I) for Dietrich (1903, 1; 2312, 1); (II) for Dietrich's retainers (2273, 1) and thus virtually synonymous with *Amelunge*. *Bernœre* is formed from the place-name *Berne* (*q.v.*) with the OHG suffix *-âri*, on which see under *Tronegœre*. For a number of similar MHG derivatives from Italian city-names see Matthias 29-30 (vs. later learned formations, *ibid.*, pp. 30-31).

BERNE, Verona on the Adige (Germ. *Etsch*, f.), prov. of Verona, Italy, lying *ca.* 175 km. S of the Brenner Pass, in the days of the poet an important city, enjoying a period of expansion. Andree 126 EF 2; Baed. *NI* 309; *EI* XXXV, 184-185. Historically Verona was the scene of the defeat in 499 of Odoacer (*Otacher*, *Otaker* of German heroic legend) by Theoderic (an event misinterpreted in heroic legend; cp. Kauffmann II, 47-48; *CMH* I, 439, 440, 448; Schneider I, 13) and where Theoderic often resided; his chief residence was historically Ravenna (*Raben* of heroic legend; see Matthias 167-168; Baed. *NI* 500-501). *Bern, Bœrn* of *Ths.* Though playing only a decorative rôle geographically in *NL* *Berne* is, however, very often used for purposes of personal identification: (I) for Dietrich in 1721, 3; 1726, 3; 1729, 3; 1730, 1; 1804, 1; 1981, 1 (Ms *Rîne*); 1990, 4; 2137, 3; 2238, 1; 2245, 1; 2327, 1; 2336, 1; 2349, 3; 2356, 4; 2360, 1; 2362, 1; 2364, 1; (II) for Dietrich's retainers in general: 1875, 1; 2235, 3; 2252, 2 (varying *die Dietrîches man*) 2276, 2; 2278, 3 (for Wolfwîn in particular); (III) for Hildebrant: 1718, 2; 1899, 3; (IV) for Sigestap, Dietrich's sister's son: 2258, 1.

Berne (elsewhere in MHG also *Bern*) is the normal MHG representative of the Italian city name; it is recorded in OHG as *Berna* (<**Berena*, **Berana*) and after the Middle Ages, very likely to avoid confusion with the Swiss Berne (see below), quite often specified *Dietrichsbern*; see Matthias 209-216 for a wealth of examples and citations. The basis is, as noted, Lat. *Verona* whose pronunciation at the time of transmission was apperceived by Germanic, specifically Gothic ears as *Berona* (cp. Fr. *Besançon* < Celto-Lat. *Vesontion-*, and Matthias 20). The Germanic shift of the tonic accent to the first syllable yielded *Bérona*, while the loss of the unstressed medial *o* (Matthias 23) led to OHG *Berna*, noted above; on *e* cp. Matthias 21. It is doubtful if popular association with OHG *bero* "bear" has played a rôle here (Matthias 36). Lat. *Verona* may look back to an Etruscan stem *veru-*; see Holder III, 229, also *EI* XXXV, 184.

Long since lost in German as a designation for the Italian city, it is of some interest to note that MHG *Bern(e)* survives by its adoption as the name of Berne, Switzerland (Germ. *Bern*, Fr. *Berne*, Ital. *Berna*), founded in the days of the *NL* poet, i.e., in 1191, as a military frontier post. See Egli 106; Sturmfels EL 19: Julius Studer, *Schweizer Ortsnamen* (Zurich, 1896), 63-64; Schwarz 16 and n. 1, for the Swiss and certain Bohemian and Moravian names. For historical reasons, if none other, a derivation from a continental Celt. equivalent of Corn., Bret. *bern* 'heap' 'pile', Welsh *bryn* "hill" (Holder I, 402-403, under *berg-*; WP II, 197), sometimes proposed in the past, is to be rejected. The "bear" as eponymous or namesake of the town reflects popular etymology.

BEYERLANT (*DAZ*), n., lit. "Bavarian region, territory," Bavaria (Germ. *Bayern*), Germany. In the days of the poet Bavaria was a duchy, ruled by Ludwig I of Wittelsbach (1183-1231); it was bounded by the Böhmerwald, the river Inn (*In*), the Alps, and the river Lech. It is first mentioned as a land of transit, with prominence given to the town of Passau (*Pazzouwe*) and its bishop Pilgrîm, later (1546, 2 ff.) as the home-land of Gelpfrât, whose domain on the Danube is called *Gel(p)frâtes lant*. See further F. Schronghaimer, "Bayern u. das Nibelungenlied," *Das Bayerland*, XIII (1903), 534; E. John, "Ein bayerischer Herzog im Nibelungenlied," *Deutsche Allgemeine Zeitung*, 1900, Beitrag Nr. 234, pp. 1-5. References to highway-robbery in 1174, 4 and 1302, 3-4 may represent a conscious disparagement on the part of the poet of the Bavarians (Heusler 156, 168). *Beyerlant* is mentioned in 1295, 1; 1296, 3; 1302, 2; 1427, 1; 1546, 2; 1603, 1; 1616, 1; 1619, 3. In 1297, 1 it is referred to more briefly as *lant*. In 1174, 3 and 1600, 3 the g. pl. of the ethnic name with the def. art. *der* preceeds *lant*; see also under "*Burgonden-lant*".

The Bavaria name looks back ultimately to the Celtic tribal name *Boii* (Holder I, 463-472; Much *Germania* 258-259), whence a Gmc. regional name **Bai (a)haima* "homeland of the *Boii*," Lat. *Boi(o)haemum*, etc. (Holder *ibid.*), ultimately applied to Slavic settlers in the region of Bohemia (Niederle I, 159); see Metzenthin 10 under "Beheim" for forms in various mediaeval languages, to which add OFr. *Behaigne* and ME forms listed in the *NED* under "Bohemia." From the Gmc. regional name *Bai(a)haima* was formed the ethnic name, OHG *Bêheimo*, MHG *Bêheime*, Germ. *Böhme*; the regional name *Böhmen* (Bohemia) is formally a d. pl. on which see under *Burgonden*. Parallel to this ethnic name is the Bavaria name itself, Lat. *Baivaria*, Gmc. **Baiawariôz*, lit. "inhabitants of the *Boii* country", Bohemia, first with reference to the earlier home of the Marcomanni who settled in Bavaria (Much *Germania* 368). English Bavaria, a Lat. type *ia*-formation, shows reduction by dissimilation of the older *ai*-diphthong (cp., Rum. *Bavaria*, Fr. *Bavière*, whence Ital. *Baviera*). In the present compound, *Beyer-* occurs in uninflected combination (vs. *Amelunge-*, *Burgondenlant*) with *lant*, n. "region, territory"; also cp. *Ungerlant*, below. On the element *-varii* see Kluge *Wtbldg* 29-30; Schönfeld 18 under "Amsivarii." See further Egli 90-91; Schönfeld 42-43 under "Baivarii"; Much in *Reallexikon* I, 156-157, under "Baiern;" Kauffmann II, 88-89; Schnetz in *ZONF* IX (1933), 216-217, and XII (1936), 168; Much *Germania* 260; Mezger 4 under "Begerum"; Metzenthin 10 under "Beiaraland". Forms in Oesterley 39; F-J I, 512-515.

BRUNNE, see (1) *KALTER* (*KÜELER*) *BRUNNE*; (2) *SCHOENER BRUNNE*

BURGONDE, m. wk. (on rare strong pl. see below), an inhabitant of *Burgonden*, *Burgonden-lant*, *q.v.*, a "Burgundian." Known since early times, this great Germanic tribe, almost surely originally of East-Germanic speech, resided in many parts of Germany prior to its final settlement in that part of eastern France which preserves its name, Burgundy (Fr. *la Bourgogne* and *bourguignon*, adj., Germ. Burgund). Established perhaps first on the Dan. island of Bornholm (ON *Borgundarholmr*, OE *Burgendaland*), then on the Pommeranian coast between the Oder and the Vistula, at the beginning of the fifth century the Burgundians are settled in the Rhine valley between Heidelberg and Worms as Roman foederati. In A.D. 437 they were severely, indeed fatally defeated by the Huns, and their king Gundicharius (Gunthere of *NL*, Gunnar of ON tradition) killed (see Schneider I, 200-201; Tonnelat 296-297). Later, remnants settled in the western Alps south of the Lake of Geneva; as mentioned above, their name survives in the regional name "Burgundy". Long before the date of *NL* the territory around Worms had become Frankish (Rhenish Franconia) and as early as the Germano-Latin *Waltharii poësis* these Rhenish Burgundians of history and of *NL* have become Franks in legend; in retaining a Burgundian nationality for Gunthere and others, *NL* shows a tenacity to tradition. For early records of the name and for historical data see Schönfeld 55-58; Much in *Reallexikon* I, 357-358; Kauffmann II, 58-65; Behaghel 102-103 (bibliography); *Cambridge Mediaeval History* I (Cambridge, 1936), 411; J. B. Bury, *The Invasion of Europe by the Barbarians* (London, 1928), p. 121; Ernst Gamillscheg, *Romania Germanica* (Berlin, 1936), Vol. III (on the settlement in France).

The Burgundian name is based on the original name of the Baltic island of Bornholm, i.e., *Burgund*, in turn most likely etymologically connected with Sansk. *bṛhánt-* "big" "tall"; see WP II, 173 (bottom); Schönfeld and Much *cit. supra*; Metzenthin 13-14 under "Borgund" and "Borgundar;" Gröhler II, 4-5. The spelling with *o* vs. an expected *u*, *Burgunde*, *Burgende*, is against all native tradition and was likely imported by the poet from Romanic (French) sources: see Eduard Schröder, "Burgonden," *ZfdA* LVI (1918), esp. pp. 245-246; so Wesle in *PBB* XLVI (1921/22), 232, and Paul-Gierach 43 §44 n.; for the older view of a Rhenish (Low or Middle Frankish) origin of the *o* see Heusler 33 and, half-heartedly Hempel 17 (also p. 4). OE *Burgende* (Mezger 6).

Burgonde, m. sg., is used once (in 2215, 3) with anticipatory reference to Gêrnôt (2216, 1). Elsewhere it is used only in the pl.

1. *Burgonde*, str. m. pl.: 1879, 4; 2244, 4.

2. *Burgonden*, wk. m. pl.: 21, 4; 67, 1; 68, 4; 125, 3; 128, 4; 194, 1; 218, 4; 232, 3; 273, 4; 512, 4; 562, 4; 754, 4; 760, 4; 767, 2; 859, 4; 939, 4; 1084, 4; 1092, 4; 1130, 4; 1156, 1; 1197, 1; 1208, 1; 1265, 4; 1495, 2; 1522, 1; 1562, 4; 1633, 2; 1663, 4; 1678, 4; 1718, 1; 1732, 1; 1864, 4; 1873, 3; 1884, 4; 1931, 3; heading of canto xxxiii; 1959, 4; 2012, 4; 2044, 2; 2070, 4; 2077, 4; 2167, 4; 2242, 4. The numerous d. pl. listed might theoretically look back to a n. pl.-*e* or -*en* indifferently.

In 850, 4; 1748, 3; 1894, 3 *Burgonden* enters into the group-compound *Burgonden-man*, in 696, 2 *Burgonden-degene*, where the compositional link -*en* reflects a g. pl.; see Kluge *Wtbldg.* 61 §4 and Curme 448 §249 B*a* and p. 138 §111. 10, n. The most conspicuous instance of this use of *Burgonden-* occurs in the regional name *Burgonden-lant*, below.

In *dâ zen Burgonden sô was ir lant genant* (5, 3), *hie zen Burgonden sint* (273, 4) and *heim zen Burgonden komen* (2367, 4) one feels the lack of sharp differentiation between the name used for the people and the name in the d. pl. used for the region occupied by the same; the use of the def. art. implicit in *zen* speaks, however, for classification here rather than under *Burgonden*, below.

BURGONDEN, "(land of the) Burgundians," ruled by Gunthere (Gundicharius of history) and in *NL* thought of as centering on Worms (*Wormez*); it thus answers to early fifth-century conditions (see under *Burgonde*, above).

It is used synonymously with *Burgonden-lant* and *Guntheres lant*, *q.v.* In the days of the *NL* poet the region in question corresponded to Rhenish Franconia (Germ. Rheinfranken) as opposed to *Ostervranken*, below. It is conceived of as extensive (*wît*, 693, 3), prosperous (*rîch*, 115, 3; 1469, 1), and with many fortified towns (*bürge*, 110, 4; 145, 3; 163, 3; 623, 2; 693, 2). It is mentioned in 2, 1; 44, 3; 203, 1; 288, 1; 524, 2; 529, 4; 992, 1; 1110, 1; 1474, 3; 1569, 1; 1577, 1; 1736, 4; 2010, 1; 2043, 3; 2092, 1; 2122, 1; 2188, 1; 2371, 1.

Formally *Burgonden* is the d. pl. of *Burgonde*, above, but like *Amelungen Düringen*, *Hessen*, *Kriechen*, *Ostervranken*, *Riusen*, *Sahsen*, *Swâben*, *Ungern*, is d. pl. of an ethnic name used absolutely to designate the region occupied by the people in question. This use of the petrified d. pl. (originating in prepositional phrases with *in*, *von*, *ze*, etc.), has been extended analogically to many foreign geographical names not ethnic in origin, e.g., *Arâbîn*, above, and mod. Germ. Norwegen (vs. *Norwœge*, below) and since the sixteenth century to many classical names in *-ia* (Germ. usually *-ien*) or later names formed on such a model. Formations of the same type survive in the English county names Essex, Sussex (OE *on*, *tó East-Seaxum*, *Súþ-Seaxum*), now completely disguised by the loss of inflectional ending. See Kluge *Wtbldg.* 37 §52, for further discussion and illustration of this phenomenon, also Curme 101 §88, 1.

BURGONDEN-LANT, n., "land of the Burgundians," synonymous with *Burgonden*, above. In this determinative compound the first element represents the gen. pl. of *Burgonde* (*q.v.*); Kluge *Wtbldg.* 61 §87, 4 and 63 §89. Along with certain variations noted below this is the most usual mode of reference to the Burgundian kingdom of *NL*; cp. also *Guntheres lant*, below. It is mentioned in: 49, 1; 62, 1; 77, 3; 79, 4; 84, 4; 104, 3; 170, 3; 234, 4; 264, 3; 467, 2; 472, 4; 567, 3; 595, 4; 646, 3; 718, 3; 745, 2; 747, 4; 752, 1; 787, 3; 795, 3; 829, 1; 1143, 3; 1394, 3; 1407, 3; 1408, 3; 1477, 3; 1524, 4; 1584, 1; 1644, 2; 1657, 4; 1667, 2; 1722, 4; 1870, 3; 1880, 3; 1940, 4; 1978, 4; 1989, 2; 1997, 1; 2073, 4; 2201, 4; 2252, 4.

The region is more often referred to briefly as *lant*, in the pl. with the sense of "domains", in some instances perhaps more specifically to *Guntheres lant*: 55, 4; 56, 3; 74, 2; 75, 3; 87, 1; 106, 2; 108, 3; 111, 3; 113, 2; 137, 1; 143, 4; 149, 2; 158, 4; 161, 3; 165, 3; 222, 2; 238, 2; 239, 3; 240, 3; 251, 3; 254, 2; 265, 3; 268, 1; 315, 3; 334, 2; 530, 3; 533, 2; 540, 2; 566, 1; 596, 3; 608, 2; 685, 3; 702, 3; 727, 2; 729, 3; 732, 3; 738, 2; 757, 3; 758,4; 764, 3; 767, 1; 777, 4; 783, 2; 809, 1; 874, 3; 880, 3; 884, 3; 891, 2; 971, 1; 1001, 1; 1023, 2; 1098, 2; 1107, 3; 1127, 1; 1136, 1; 1178, 3; 1181, 2; 1231, 3; 1431, 2; 1440, 3; 1445, 4; 1469, 1; 1473, 2; 1489, 2; 1509, 4; 1519, 1; 1522, 2; 1589, 3; 1716, 3 (*vaterlant*); 1916, 2; 1964, 3; 2340, 2.

In a number of instances, instead of the compound *Burgunden-lant*, the g. pl. of the ethnic name with the def. art. preceeds *lant*, thus, *der Burgonde* (str.) *lant*: 531, 4; 774, 4, and *der Burgonden* (wk.) *lant*: 243, 4; 261, 4; 278, 4; 378, 4; 1439, 4; 1587, 4; 1776, 4; 1804, 2; 1963, 4; 2196, 4; 2228, 4; 2317, 4; 2362, 4.

DÜRINGE, st. m. pl., "Thuringians," as auxilliaries of Etzel mentioned in 2074, 1 together with the Danes (*Tenen*) as witnesses of the death of their lord Inrvrit (Irminfrid of history). On the Thuringian element in *NL* see Heusler 87-88. In the fifth century the Thuringians occupied considerable territory, extending from the Danube to Magdeburg, and were tributaries of Attila; later and under Frankish domination their land became more restricted and coincided approximately with the Thuringian Forest (Thüringerwald). See Much in *Reallexikon* IV, 325-326, under "Thüringer;" Kauffmann II, 155-158.

The Thuringian name looks back to Gmc. **þuringôz* (OE *þyringas* [Mezger 34-35], ON *þyringar*) of unknown meaning and origin; it may be represented in the second element of the earlier tribal name *(H)ermunduri* < **Ermun-*, *Irmun-þurôz* (so Schönfeld 78; Much *Germania*; Sturmfels EL 64-65 under "Hermunduren"). The MHG spelling *D-* (Gmc. *þ*) is normal; with the mod. *Th*-spelling (i.e., *T-*) for earlier *D-* one might compare mod. *tausend* (see Braune-Helm 155 §167 A. 8; Paul-Gierach 33 §36, 4); the mod. spelling may be pseudo-classical (Much, *Deutsche Stammeskunde* 112). On tribal names in *-ing* see Kluge *Stbldg.* 15 §27a.

DÜRINGEN, Thuringia (Germ. *Thüringen*), mentioned in 1345, 3; 1877, 2; 2031, 2; 2068, 1, as the land of Irnvrit and his followers, who in history as in legend were allies and friends of Attila-Etzel at the Hunnish court. It is used synonymously with *Düringen-lant*, below, and in the days of the *NL* poet was a landgraviate bounded on the north by the Duchy of Saxony (*Sahsen*), on the south by Hesse (*Hessen*), which actually formed part of Thuringia. Formally *Düringen* is the d. pl. of the ethnic name *Düringe*, above; on this use of the d. pl. see under *Burgonden*. For forms see Oesterley 685; F-J II, 1063-1069; further Egli 920 and Metzenthin 126 under "þyringaland."

DÜRINGEN-LANT, n. Thuringia, used synonymously with *Düringen*, above, is mentioned in 1878, 3. On the formation of this type of determinative compound see under *Burgonden-lant*.

ELBE, f., the river Elbe, mentioned in 1244, 2 as forming a part of Etzel's domain; see under *Mer*. The Elbe (Boh. *Labe*) rises in Bohemia on the south side of the Riesengebirge and, after following a course of *ca.* 1150 km., empties into the North Sea (*Sê*, *q.v.*) near Cuxhaven. The name reflects Gmc. **Albis* gen. *Albias*. (IE *albho-* "white" "bright", WP I, 92-93; Kretschmer *Glotta*, XXIV (1936), 54), whence *Albis* of Roman writers, med. Lat. *Albia*, OE *AElf*, *Ielf*, MLG *Elve*, ON *Saxelfr*, f., lit. "Saxon, i.e., German 'big river' (*elfr*)." (Cp. Celt. *Albis*, source of Fr. Aube, Holder I, 85). See Hellquist under "älv;" Karsten 56; Magoun, *Mediaeval Studies*, VI (1944), 320, under "Sax-elfr." For forms see Oesterley 154; Egli 281-282; F-J I, 91-92; see Kretschmer, *loc. cit.*, for a likely connection with the Ancient Gk. river *Alpheios*, Lat. *Alphêus*, mod. *Rouphia*.

1. *ENSE*, f., the Enns (Ens) river, right bank tributary of the Danube (cp. the designation "Land unter" and "ob der Enns;" Tonnelat 318), rising in the Kleine Tauern in Pongau and entering the Danube (*Tuonouwe*) between the Traun (*Trûne*) and the Ybbs; it divides the provinces of Upper and Lower Austria. Mentioned in 1301, 2 as the point to which Gotelint was to come from Pöchlarn (*Bechelâren*) to meet Kriemhilt and her retinue, the Enns is perhaps conceived as the western limit of Rüedeger's margraviate (*Rüedegeres lant*). The name looks back to Celto-Lat. *Anisus* etc. (Holder I, 156 and III, 626-627), OHG *Enesis*, *Ans*, *Ens*. For forms see Oesterley 163; F-J I, 162; Schiffmann I, 263. The name is quite possibly Celtic and formed on the base *an-*, represented in MIr. (gloss) *an* "water," Gallo-Lat. (gloss) *anam* "swamp" (Holder I, 135, *s.v.*) and thus mean "the river flowing through swampy land" or the like; so Steinhauser *AfslPh* XLII (1928/29), 257; Sturmfels EL 47; and cp. WP II, 5 under "*pan-*". Weinberg 78 retains the unpromising alternate association with Goth. *(uz-)anan* "to breath (out)." The name is conceivably etymologically related to the OBrit. Anglian river-name *Ansa* of *IA* 480, 3 (Schiffmann *LE* 42), though not to identified etymologically at least with the Ouse.

2. *ENSE* (*UF DAZ VELT*), f., Enns (Ens) "on the plain" (Ennsfeld), a town on the right bank of the Enns (1. *Ense*, above), near the latter's confluence with the Danube. Andree 77 C 1; Baed. *AH* 126-127. It is mentioned in 1304, 1 as being reached after crossing the Traun and as the town on whose outskirts Kriemhilt and her retinue, en route to join Etzel at Tulln (*Tulne*), are met by Gotelint and entertained there, where knightly sports (*ritterschefte* 1306, 3) are practised. Before proceeding to Pöchlarn (*Bechelâren* 1317, 2) the party spends the night (*nahtselde* 1304, 3), camping out (*herberge* 1305, 1) on the plain (cp. *ûf daz velt* 1304, 1) on which the town stands; they are lodged in pavillions (*hütten* 1304, 2; 1316, 3) and in tents (*gezelt* 1304, 2). For similar conventional details cp. *Pazzouwe*, below. In *PBB* XLII (1917), 520-521, K. Bohnenberger suggests that the town of Enns is mentioned here as a sort of substitute for near-by Lorch (see Schiffmann LE 6-8; Schiffmann II, 144); he also points out that the burg at Enns was presented to Otto II in 977 to Bishop Pilgrîm. As in *Gran* the place-name is from the river-name; for forms see 1. *Ense*, above.

ETZELN BURC, f., "Etzel's stronghold, castle, royal seat," in *NL* probably understood as part of, or more or less equivalent to, the town of *Gran* (Hungar. *Esztergom*) (Tonnelat 324-341; Husz *ZfdPh* [1932], 110), unlikely thought of as on the site of Ofen, later Alt-Ofen (Roman *Aquincum*, Hungar. *O-Buda*) capital of Hungary after 1361 and not mentioned in *NL* (Husz *loc. cit.*, n. 14); see further under *Gran*, below. In *Ths.* where the geography of the Nibelung Route" is shifted from east to west (Schneider I, 434), Atli's residence is located at Soest (*Susat*) in Westphalia. As Schröder has pointed out (*ZfdA* LXXII [1935], 56; Magoun, *ibid.*, LXXVII [1940], 65), *Etzeln burc* is no proper place-name and should certainly be written as two words; cp. also *Prünhilde burc* as a substitute for *Isenstein*. *Etzeln burc* is mentioned in 1379, 1, the heading to canto xxvii (Bartsch); it is *diu burc* in 1987, 3 (*vil wîte*); 2018, 1; 2093, 1. In the more general conception of Etzel's "court" it is referred to as *hof*, often *ze hove*, in 1334, 2; 1386, 1; 1804, 4; 1805, 1; 1806, 1; 1816, 2 (*Etzeln hof*); 2102, 2; 2135, 2; 2141, 4 probably also in 1947, 4. See also *hof* "court-yard," below. Its location on the Danube is referred to by *stat*, n., in 1383, 1.

The poem pretends to some knowledge, though not much, of the religious architecture of the place, quaintly conspicuous in view of earlier emphasis on Etzel's paganism (cp. stz. 1248, 1261, 1395, and Schönbach 8-9). There is a cathedral: in 1850, 3 1857, 1; 1859, 2 it is a *münster*; in the heading to canto xxxi and in 1855, 2 a *kirche*; by the cathedral is a church-yard or close, viewed as a sanctuary sacred to Our Lord (*vrône vrîthof*, 1857, 2).

Comments on secular monuments are confined to Etzel's palace (see Tonnelat 323-324) and details of the same. It is *palas* in 1505, 2; 1760, 3 (*wît*); 1808, 1; 1881, 2; 1898, 1; 1976, 2; 2039, 3; 2098, 2; 2235, 2; 2359, 2; it is much more often referred to as *hûs* in the sense of "royal residence" "castle:" 1761, 1; 1772, 3; 1832, 3; 1834, 1; 1835, 1; 1838, 3; 1842, 3; 1843, 2; 1844, 3; 1904, 2; 1932, 2; 1965, 4; 1992, 2; 1994, 2; 1996, 2; 2000, 1; 2005, 2; 2010, 3; 2019, 1; 2039, 2; 2050, 3; 2074, 2; 2077, 1; 2088, 3; 2109, 1; also 2111, 3; 2120, 2; 2174, 2; 2203, 1; 2266, 2; 2300, 1; 2310, 3; 2324, 4; 2328, 3; 2333, 1. In the palace, or at least viewed as a part of the same, is the great hall (*sal*), center of much of the action of the latter part of the poem, especially as the setting on an heroic scale of what the Icelanders of old would have called a *brenna*: 1505, 2; 1745, 2; 1761, 1; 1824, 1 (*wît*);

1833, 1; 1850, 1; 1875, 3; 1880, 4; 1881, 2; 1894, 2; 1909, 1; 1972, 3; 1979, 2; 1998, 1; 2003, 1; 2008, 1; 2009, 2; 2013, 3; 2018, 3; 2029, 3; 2037, 3; 2076, 1; the heading to canto xxxvi; 2099, 3; 2109, 2; 2110, 1; 2111, 1; 2118, 1; 2119, 1; 2121, 1; 2175, 1; 2192, 3; 2262, 1; 2274, 1; 2287, 2; 2292, 3; 2328, 3; 2334, 3; 2357, 3. In 2311, 2 *gadem* seems to refer to the *sal*; for other use of *gadem* see below. A conspicuous point of resistance and the scene of much bloody combat is the door (*tür*[*e*], common in the phrase *für, under die tür*) or doors (*türen*), presumably the main entrance to the *sal*: 1832, 3; 1834, 1 (*t. des hûses*); 1836, 3; 1840, 2 ;1951, 1; 1957, 1; 1959, 3; 1973, 2; 1974, 1; 1978, 1; 1979, 3; 1980, 1; 1993, 2; 2013, 1; 2079, 3; 2084, 3. Likewise often the scene of bitter fighting is the *stiege* "stair" leading up into the *sal*: 1772, 2; 1948, 4; 1950, 1; 1958, 3; 1978, 2; 2013, 3 (*sales stiegen*); 2029, 4; 2052, 4; 2053, 2; 2061, 3; 2108, 2; 2192, 4; 2348, 3, while one or more of the interior walls of the hall (*sales want*) figure prominently in the great battle, on one occasion mentioned as a source of protection: 1833, 1; 1880, 4; 2119, 1; 2274, 1; 2287, 2. Gutters (*rigelsteine*), evidently outside the building and into which blood flows through openings (*löcher*) from within, are mentioned in 2078, 2. There is a treasury or treasure chambers (*kamere*), mentioned in 1152, 1, a tower or towers (*turn, türne*) in 2004, 3; 2039, 3; 2207. 3; 2235, 2; 2359, 2. Sleeping rooms and other appartments are *gadem* (1836, 3; 2070, 1; 2125, 4; 2343, 2) and *kemenâte* (1413, 2); *venster* are mentioned in 1762, 3; 1869, 1; 2247, 2. The palace court-yard is the *hof* in 1760, 1; 1869, 4; 1872, 3 (*vil wîten*), perhaps also in 1947, 4; 1948, 3, but see under *hof* "court," above. Quarters for putting up visitors, presumably mostly out in the town, are *herberge* (1359, 4; 1457, 1; 1735, 4; 1746, 2; 1822, 4; 1884, 1; 1897, 3; 1910, 2; 1952, 4; 2091, 3); in stz. 1735, 1952, 2091 these are scenes of carnage. The existence of *herbergen* is further suggested by the vb. (*ge*)*herbergen* in 1735, 1. For an attempt at a partial reconstruction in words of the *burc* see Oskar v. Zingerle, "Etzels Burg in den Nibelungen," *Festschrift zur 50-jährigen Doktorjubelfeier Karl Weinholds am 14. Januar 1896* (ed. Oskar Bremer *et al.*, Strassburg i. El., 1896), pp. 157-170. That the structure is conceived of as of stone and that the fire only attacks the roof and ceilings of rooms is obvious (Heusler 93).

As the scene of the most important and most dramatic action in second part of *NL* it is not surprising that *Etzeln burc* should be described in relatively elaborate detail, though, generally speaking, less circumstantially than is *Wormez*.

On an historical burg constructed for Attila in the basin of the Theiss R. (Slav. *Tisa*) see art. "Attilapalast" in *Reallexikon* I, 139.

ETZEL(E)N LANT, n., "Etzel's land(s), domain(s)," whose boundaries are defined in 1244, 2 as extending *Vome Rôten zuo dem Rîne, von der Elbe unz an daz mer* (see J. Lunzer, *ZfdA* LXVII [1930], 140-144); the significance of these boundaries can be most conveniently discussed under the entry *Mer*, below. This genitival quasi-compound, a type further represented by *Gelpfrâtes. Guntheres. Prünhilde, Rüedegêres, Sigemundes,* and *Sîvrides lant* and favored by the poet as an occasional substitute for a true geographical designation, varies, and is to be viewed as virtually synonymous with, *Hiunen-lant, Ungerlant,* and *Ungern*, below. The central stronghold of *Etzel*(*e*)*n lant* is *Etzeln burc*, above. *Etzeln lant* is mentioned in 5, 4; 1211, 3; 1253, 3; 1258, 3; 1292, 4; 1322, 4; 1380, 4; 1388, 4; 1447, 4; 1458, 1; 1459, 4; 1480, 3; 1482, 2; 1490, 4; 1494, 4; 1511, 1; 1513, 3; 1537, 1; 1538, 4; 1540, 3; 1693, 4; 1698, 4; 1741, 4; 2120, 4; 2180, 4; 2194, 4. The formula is used in the pl. in 1530, 4 (*in Etzelen landen*), with which one might compare *Niderlanden* vs. *Niderlant*.

The region is often referred to more briefly as *lant*, in the pl. "domains": 1149, 2; 1155, 1; 1195, 2; 1231, 3; 1252, 3; 1264, 3; 1393, 1; 1404, 3; 1405, 4;

1410, 3; 1412,2; 1414, 3; 1417, 3; 1449, 1; 1498, 2; 1499, 3; 1504,3; 1718, 1; 1727, 3; 1743, 2; 1773, 2; 1787, 2; 1788, 2; 1810, 3; 1811, 3; 1814, 3; 1864, 3; 1902, 3; 1955, 3; 2000, 1; 2089, 2; 2092, 4; 2093, 2; 2101, 3; 2144, 3; 2145, 3; 2203, 4.

EVERDINGEN, Eferding (var. Efferding), Upper Austria, *ca.* 3 km. S of the Danube and between Passau (*Pazzouwe*) and the Enns (1. *Ense*). Andree 77 C1; Baed. *AH* 140. It is mentioned in 1302, 1 as a stage in Kriemhilt's progress down the Danube from Passau and is the first Austrian locality mentioned in her itinerary—with the subaudition of a happy exit from Bavaria! (cp. 1302, 2-3; Heusler 168), apparently thought ill of by the poet (see under *Beyerlant*). For forms see Oesterley 145; F-J I, 836; Schiffmann I, 244; Schwarz *OöO* 112.
Older attempts to associate with, and derive from, Celtic *Eburodunum* (Ptolemy), a wide-spread name (Holder I, 1398-1400), must be abandoned, esp. in view of the early form *Efridingen*: the name is surely an old *ing*-name (Helbok 15-19), based on the OHG personal name *Efrit* (Schiffman *LE* 22; Schwarz *OöO* 112; Weinberg 78).

GEL(P)FRATES LANT, n., the frontier domain or margraviate of Margrave Gel(p)frât in *Beyerlant* (1546, 2), mentioned in 1531, 3; 1553, 3; 1570, 4 (see Heusler 168). In 1531, 3 it is said to be bounded by the Danube (*vluot*). It is referred to more briefly as *lant* in 1547, 4; 1548, 3; 1558, 3; 1572, 4; 1586, 2; 1605, 2. The Nibelung Route (*Strâze* III) is mentioned in 1601, 1; 1602, 4 (*strâze*).

GRAN (*STAT ZE*), Gran (Hungar. Esztergom), dep. Esztergom, Hungary, a town situated on both banks of the Danube near the confluence of the latter with the Gran river (OHung. *Gran*, MHung. *Goron*, mod. Hung. *Garam*; see Melich *ZfslPh* I (1924/25), 93; Slav. *Hron*). Andree 79 E4; Baed. *AH*. 448-449. It is mentioned in 1497, 2 as the meeting place of Etzel and Kriemhilt and their ambassadors Wärbel and Swemmelîn. On the determinative phrase *ze Gran* see under *Wormez*. In 1505, 2 we are told that the *palas* and *sal* are to be fitted out with seats in anticipation of the arrival of the distinguished Burgundian visitors. *Gran*, perhaps to be identified with Rom. *Carpis*, was the cradle of Hungarian Christianity and birthplace of Stephen I, king and patron saint of Hungary, who founded an archbishopric there in 1001. Early the capital of Hungary, *Gran* was destroyed by the Tartars in 1241, though later rebuilt. After 1361 O-Buda (Germ. *Alt-Ofen*; cp. Slav. *pech*, f., "stove" "oven" and yielding the place-name Pest [cp. Niederle I, 113 and n. 1], now combined in Budapest), near the site of Rom. *Aquincum* on the right bank of the Danube and *ca.* 60 km. downstream from *Gran*, became the capital. *Gran* is all but certainly conceived in *NL* as the site of Etzel's residence *Etzeln burc*, q.v., and Tonnelat 324, 334-335.
The river-name, source of the Germ. town-name, is recorded by Marcus Aurelius as Γρανούας (PW XIV (1912), col. 1827, under "Granuas"), probably rendering Gmc. (Quadian) **Gran-ahwa* (Much in *Reallexikon* II, 328, under "Gran" etc.) and meaning 'pine tree stream'; cp. OHG *grana*, ON *grön* 'pine-tree' (Schwarz 22); not Slav. as Sturmfels *EL* 59. The upper valley of the *Gran* was early occupied by the Quads (Much *Germania* 377). In later times the town received the pseudo-Classical names *Istropolis*, *Istrogranum*, with use of 'Ιστρος, *Ister* see PW VIII [1901], 2108 ff. under "Danuvius", Classical (Thracian) name of the lower Danube, i.e., below the confluence of the Save at Belgrade; on Lat. *Danuvius*, old name of the upper reaches of the river see under *Tuonouwe*,

below. From *Istrogranum* "Gran on the Danube" has descended Hungar. *Esztergom*, also the fanciful Hungaro-Lat. *Strigonia*, *Strigonium*. For Germ. forms see Oesterley 227-228; Egli 368.

GUNTHERES LANT (*DAZ*), n. "domain of Gunthere," Burgundian king and leader, hence synonymous with *Burgonden* and *Burgonden-lant*. For this type of genitival quasi-compound see under *Etzel(e)n lant*, above. This designation of the Burgundian realm occurs in 45, 4; 59, 2; 72, 3; 138, 2; 139, 1; 141, 1; 217, 3; 236, 4; 247, 2; 270, 4; 307, 4; 520, 4; 701, 4; 878, 4; 908, 3; 1125, 1; 1474, 1; 1475, 4; 1542, 4.

Some instances of *lant* listed under *Burgonden-lant* may stand more specifically for *Guntheres lant*.

HEIMBURG (*DIU ALTE*), f., Hainburg, on the right bank of the Danube (*Tuonouwe*) near its confluence with the March (Slav. *Morova*) in Lower Austria and near the Hungarian frontier. Andree 77 E1 79 C3; Baed. *AH*. 447. It is mentioned in 1376, 1 as an overnight station on the route taken by Etzel and Kriemhilt from Vienna (*Wiene*) to *Etzeln burc*; on the poet's choice of the Austrian Hainburg vs. the near-by Hungarian Pressburg see Tonnelat 340. By virtue of its strategically commanding position Hainburg has from prehistoric times been militarily and otherwise important; the epithet *diu alte* is thus appropriate.

For forms see Oesterley 248 under "Haimburg;" F-J I, 1192-1193. Persistent early forms *Heimen-*, alongside of *Heim-*, point strongly if not decisively to a derivation from the personal name OHG *Haimo*, MHG *Heime*; Hainburg thus means "Heime's fortified place" (cp. similarly Heimenkirch between Lindau and Kempten in Bavaria); see Walter Steinhauser, "Die genitivischen Ortsnamen in Österreich," Vienna Academy, *Sitzungsberichte*, Vol. 206 (1927), 1st essay, p. 10. The reduced form *Hain-*, alongside of *Heim-*, shows delabialization of *-m* (Behaghel 391 §373, 2; Paul-Gierach 69 §84, 6). Association with MHG *hagen*, m., late MHG *hain*, highly literary mod. Germ. *Hain* "fane" and the like, is vs. Weinberg 55 out of the question here. For another genitival name in *NL* see *Zeizenmûre*, below.

HESSEN, Hesse (Germ. *Hessen*), mentioned in 176, 1 as a region E of the Rhine, through which the Burgundians and Sîvrit pass on their way to their campaign against the brother-kings of Saxony (*Sahsen*) and of Denmark (*Tenemark*). In the days of the *NL* poet Hesse formed part of Thuringia (*Düringen*). On the travel-route implied here see further Magoun *MLR* XXXIX (1944), 41, n. 3, col. 2, also under *Sahsen*. Formally *Hessen* is the d. pl. of *Hesse*, m. sg., "a Hessian," not used in *NL*; on this use of the d. pl. see under *Burgonden*, above.

There can be little doubt that the Hessians (OHG *Hassi*, *Hessi*, etc.), first mentioned by Boniface in 737, continue in some fashion the old tribal name *Chatti* (Schönfeld 130-131), though the relationship of these names and, indeed, their respective etymologies has not been determined. A side-problem is the relationship of *Chatti-Hesse* to the Chattvarii, OE *Hetware*, *Hœtwere* (Schönfeld 131; Much *Germania* 286). See Much in *Reallexikon* I, 370-372; Kauffmann I, 246, n. 6 and II, 153-154; Egli 407-408; for forms Oesterley 281-282, F.-J. I, 1284-85.

HIUNE, wk. m., pl. *Hiunen*, lit. a Hun, Huns, member(s) of an Asiatic

(Mongolian) tribe of nomads, most formidable after 445 A.D. under Attila (Etzel of *NL*, Atli of ON tradition), which invaded Europe *ca.* 372. On the Huns under Attila see *CMH* I, 360-366. In some measure the *Hiunen* of *NL* were perhaps historically conceived by the poet and better informed readers, but generally speaking it is likely that these inhabitants of *Hiunen-lant* (*q.v.*), in turn obviously equated with *Unger-lant* (vs. Bálint Hóman, *Geschichtliches im Nibelungenlied* ("Ungarische Bibliothek, Ser. 1, No. 9, Berlin, 1924), pp. 8-9), were, however unhistorically, thought of as Hungarians (Magyars) (Tonnelat 317), whose name is of quite different origin (see below). *Hiune*, sg., occurs in 1889, 3; 1892, 1; 1896, 3; 1928, 3; 2017, 4; 2121, 2; 2147, 2; *Hiunen*, pl., of far higher frequency, in 1169, 4; 1170, 4; 1239, 1; 1256, 2; 1264, 2; 1271, 2; heading of canto xxi; 1344, 4; 1361, 1; 1382, 4; 1384, 4; 1390, 4; 1416, 3; 1461, 2; 1469, 3; 1471, 4; 1476, 4; heading of canto xxv; 1535, 4; 1543, 3; 1582, 3; 1635, 2; 1703, 4; 1713, 3; 1715, 2; 1725, 3; 1731, 4; 1732, 3; 1750, 4; 1762, 2; 1811, 2; 1820, 2; 1840, 1; 1866, 3; 1882, 4; 1885, 2; 1887, 3; 1923, 4; 1934, 1; heading of canto xxxiii; 1957, 2; 1960, 4; 1966, 4; 1969, 2; 1994, 4; 2004, 3; 2008, 1; 2011, 2; 2015, 3; 2099, 1; 2101, 4; 2194, 3; 2337, 3.

Like *Burgonden-* (see under *Burgonde*) *Hiunen-* as a combinatory form enters into a number of compounds, so *Hiunen-degene* in 1959, 2; 2029, 2; *Hiunen-recke*(*n*) in 1939, 2; 1942, 1; 1999, 1; 2138, 1; *Hiunen-spilman* in 1439, 2.

The Hun name would seem to look back to the mixed Mongolian nomads known to the Chinese from *ca.* 200 B.C. as *Hiung-Nu* (also *Hiong-*, *Heung-Nu*). The name appears in med. Lat. as *Hun*(*n*)*us*, Gk. Οὖννοι, OHG *Hûni*, whence MHG *Hiune*, early mod. Germ. *Heune*, and mod. Germ. *Hüne* in the sense of "giant;" cp. also ON and mod. Icel. *Húnar*; *Hýnir* in *Ths.*; OE *Húnas*, *Húne* (Mezger 20); OS *Hûni*; and Kluge-Götze under "Hüne." The curious semantic development in later Germ. is explained by the formal coincidence of the ethnic name with Gmc. *hûn-* "(young) bear" "strong youth," in the West-Gmc. dialects exceedingly common as a prototheme (to some extent as a deuterotheme) in personal names and strikingly familiar in the surviving Germ. *Humbolt* (OHG *Hûn-balt*, OE *Hún-beald*) and Engl. (St.) *Swithun* (OE *Swiþ-hún*). Mod. Germ. *Hunne*, like Engl. *Hun*, is late and based on Lat. On the ethnic name see further Schönfeld 142-143 under "Hunila;" *NED* under "Hun," sb.; Hellquist under "hunner;" Metzenthin 43-44 under "Húnaland."

HIUNEN-LANT, n., "land of the *Hiune*," *q.v.*, above, and synonymous with *Etzeln-lant* and *Unger-lant*, thus in effect equivalent to Hungary. See also under *hiunisch*, below. It is mentioned in 1166, 3; 1168, 3; 1182, 3; 1190, 3; 1250, 3; 1282, 3; 1332, 1; 1423, 1; 1457, 1; 1500, 3; 2127, 3. On the formation of this determinative compound see under *Burgonden-lant*. In a number of instances, instead of the compound the g. pl. of the ethnic name with preceeding def. art (*der Hiunen lant*) is preferred, so in 1289, 2; 1326, 3; 1399, 3; 1495, 3; 1688, 2; 1893, 2; 2242, 3; cp. under *Burgonden-lant* for a similar practice. In 1498, 2; 1499, 3; 1506, 3 it is referred to more briefly as *ditze lant* and the like. *Húnaland* in *Ths.* is thought of as centering on Soest (*Susat*) in Westphalia; see also under *Etzeln burc*, above.

HIUNISCH, adj., "pertaining to the *Hiune*," is used: (I) of the Hunnish domains: *hiunische lant*, pl. 1180, 4; *daz hiunische lant*, 1375, 4; 1712, 4; *hiunische rîche*, pl., 1462, 3; (II) of Hunnish warriors in 1975, 3; 2083, 3; 2142, 2; and (III) of Hunnish tourneying customs in 1880, 2.

Hiunisch is formed from *Hiune* + the suffix *-isch*, on which see under *arâbîsch*, and cp. *tiusch*, below.

IN (DAZ), the Inn river (mod. Germ. *der Inn*, dial. also still *das* I.), right bank tributary of the Danube, whose confluence with the same at Passau (*Pazzouwe*) is mentioned in 1295, 4, where the Inn's swift current (*vluzz*) is noted. The stream is generally familiar from the name of Innsbruck, situated at its confluence with the Sill in the Tirol.

As *Aenus* (Tacitus), Αἶνος (Ptolemy) (Holder I, 71 and III, 541 under *Ainos*; PW I [1894], 596), also *Oenus*, *Enus*, the Inn was well known in antiquity. A most unlikely derivation from the IE root *ei-* (*i-*) "go" (WP I, 102-105) has been urged (Schiffmann *LE* 37, n. 3; Weinberg 111, Sturmfels *EL* 70); if so, it must be with the rare *n*-formans (cp. MHG *jân*, m. "strip of unmowed grass or grain"; see WP I, 105 and Kluge-Götze under "Jahn"). The etymology is obscure, though the name is presumably Celtic. From the eighth century occur forms with *I-* (*Ina*, *Ine*, *In*[*n*]*us*) which are the immediate source of the mediaeval and mod. name; these may well have arisen from a by-form **Enia* (Schwarz *OöO* 117) or possibly **Ennus* (with double *n*) > Gmc. **Inna*(*z*), OHG *Inn*, n. and/or m. (see Braune-Helm 22 §30b). For forms see Oesterley 319; Egli 447; F-J I, 10-11; Schiffmann I, 524; Pichler II, 108.

INDIA (DAS LANT), India (Germ. *Indien*), mentioned in 403, 1 as a source of precious stones (*steine*); see under *Arâbî* for other lands introduced in similar connections.

The MHG *Indîâ* comes directly from Lat. *India* < Gk Ἰνδία < Ἰνδός, the Indus R.; thus "India" means "region of the Indus", see Egli 444-445. Indus, in turn, looks back to Sansk. *sindhu-h* "river(?)," whence the modern regional name Sindh; the latter appears in OPers. and Urdu as *hindu-*, whence the Engl. ethnic name "Hindu," sb. and adj. The lack of initial *H-* (for older *S-*) in the Gk (and Lat.) forms is presumably dialectal (Ionic?). See WP II, 509; *NED* under "Hindu" and "India"; Metzenthin 46.

ISENSTEIN, m., as if for Germ. "Eisenstein," lit. "Iron Rock," mentioned in 382, 3; 384, 3; 476, 3, as the name of Prünhilt's capital city in Iceland (*Islant*). The place is entirely imaginary and presumably the poet's free invention; the name is formed according to a common pattern of Germ. names in *-stein* with an implication of a fortress built of stone or on a rock foundation; see Magoun, *MLR* XXXIX (1944), 38, n. 4; Helbok 73.

Isenstein is pictured as a "fortress" (*veste*, 384, 3), a fortified town (*burc*, 389, 2; 403, 4; 405, 1; 407, 1; 410, 3; 477, 2), situated near the coast (cp. *sant*, 396, 2, and *fluot*, 403, 3). In it are eighty-six towers (*türne*, 404, 1) and three big palaces (*palas wîte*, 404, 2). One palace would seem to be Prünhilt's special residence (*palas*, 469, 2; 511, 1), in which is her hall (*sal*, 400, 2; 404, 2-3; 516, 2), said to be of green marble. Architecturally windows are featured (389, 3; 395, 3; 396, 3; 398, 4), as are crenellations (*zinnen*, 508, 1). Outside the palace grounds are lodgings for visitors (*herberge*, 512, 1) and outside the town is a marked out arena (*rinc*, 433, 1; 449, 2) where Prünhilt and Gunthere, the latter invisibily aided by Sîvrit, contend at certain homely sports. *Isenstein* is once referred to as *Prünhilde burc*, *q.v.*

ISLANT, n., Iceland (Germ. *Island*), mentioned in the heading to canto vi; 418, 1; 550, 3; 607, 4, is thought of in *NL* as ruled by Prünhilt, whence the alternate designation *Prünhilde lant*, below. It is used in 580, 1 (*die von I.*) to define the inhabitants. It is correctly conceived of as an island (*über sê*, 326, 1); *Islant's* capital is *Isenstein*; there are numerous other fortified towns or castles on the island (*bürge*, 383, 1; 383, 4; 523, 3) which is said to be extensive (*die wîten marken*, 383, 2). It is referred to more briefly as *lant* in 383, 4 (*hêrlîche*); 396, 1; 400, 4; 405, 3; 419, 3; 443, 4 (pl. "parts" "regions"); 444, 1; 446, 1; 475, 3; 479, 3; 522, 1; 526, 1; 526, 4 (*vaterlant*); 527, 4. Its surrounding waters are *fluot* in 378, 1; 390, 3; 403, 3; 409, 3; 504, 3; 531, 2; a beach or shore is *sant* in 482, 1. On *sê* of 326, 1 see *Sê*, below.

On the realistic character of the route of Sîvrit and the Burgundians to Iceland, see Magoun, *MLR* XXXIX (1944), 38-42; Tonnelat 49 quite misjudges the poet here, as does, I think, Lichtenberger 156.

MHG *Islant* answers directly to ON *Island* "land of ice-floes, drift-ice," apparently bestowed upon the island *ca.* 860 by one of the early discoverers, the Norwegian Flóki Vilgerðarson (or Glámsson); see further Magoun, *Mediaeval Studies*, VI (1944), 316.

(EIN) KALTER (KÜELER) BRUNNE, wk. m., "cold, cool spring," an unidentified nature-name referring to the spring, apparently low down on the mountain-side (970, 3) in the Vosges Mountains (*Waskenwalt*, below) where Sîvrit was slain by Hagen. It is mentioned, usually without epithet, in 917, 3 (*kalt*); 969, 2 (*kalt*); 970, 3; 973, 3; 976, 4; 977, 4; 978, 2; 979, 1 (*küele*); 981, 1; 983, 1; 984, 3; in 979, 2 (*fluot*) and 977, 4 (*vluzz*) reference is to a stream or gush of water issuing from the spring. It is pictured as in a glade or the like, with grass (974, 3), clover (976, 3), and flowers (988, 1; 998, 1); nearby is a linden tree (972, 1; 977, 3).

On the *C*-redactor's localization of the spring at an *Otenhein* in the Odenwald, see below.

See Oesterley 329 for numerous p. n. compounded of *kalt* and *born*, *brun*, also the index of Andree's *Allgemeiner Handatlas* for other names in-*brunn(en)*, *-bronn*, *-born*; Helbok 80. Cp. *(Ein) Schœner Brunne*, below.

KIEWE (LANT ZE), Kiev, Kieff (Germ. *Kiew*, *Kijew*) on the right bank of the Dneiper R., gov. of Kiev, and capital of the Ukraine. Andree 142 O5. It is mentioned in 1340, 1 as the home district (*lant*) of numerous warrior retainers of Etzel. In the ninth and tenth centuries a center of the Varangian-Russ Principality of Kiev, this famous mediaeval city (Tonnelat 325-326) was in the days of the *NL* poet entering upon a period of decline and ultimate devastation at the hands of the Tartars. Kiev, or rather the region centering upon it (*lant ze Kiewe*) is certainly felt here as distinct from *Pœlân* and perhaps from *Riuzen*, *q.v.* See Droege *ZfdA* LI (1909), 182-183. On the determinative phrase *ze Kiewe* see under *Wormez*. The name is expectedly common in ON documents; see Metzenthin 61-62 under 'Kænugarðr' and note interesting passage in *Ths.* I, 45, esp. l. 16, with its form *Kiu*; mod. Icel. *Kijev*, *Kiév*.

The name Kiev is very likely Slav. and adjectival, formed with the Slav. suffix *-ov/-ev* from a personal name *Kii* (see F. Miklosisch, Vienna Academy, *Denkschriften*, phil-histor. Kl., X [1860], 283 §189 for 'Kyj' "cudgel" and derivatives); see Steinhauser 24 and n. 1 for Kiev and for etymologically identical names elsewhere. The name would mean "Kii's place" or the like (Sturmfels *EL* 78). For legendary particularization about an eponymous of Kiev in the Nestor *Annals of By-Gone Years* see Cross 139-140. For a survey of various older etymologies and for an ingenious though not fully convincing derivation from the Turkish, specifically Khazar, elements *küi* "river-bank" "wharf" and *ev* "settlement," see J. Brutzkus, 'The Khazar Origin of Ancient Kiev,' *The Slavonic and East European Review* (American Ser., III, 1), XXII

(1944), 108-124, esp. pp. 116-118. From the Slavic is derived MHG *Kiewe* with wk. inflection; in view of the Slav. *v* one almost must assume here the mod. pronunciation for the MHG *w* (see Paul-Gierach 14 §6, 11). The common ON designation of Kiev is *Kœnu-garðr*, where ON *Kœnu-* answers to OSlav. *Kijánov* (*górod*) "Kiev" of the bylini, looking back to an earlier *Kiján*, whence, transmitted by Baltic Wends, ON *Kœnu-*, etc.; see J. J. Mikkola, *Arkiv för nordisk Filologi*, XXIII (1906), 279-280, and further Stan. Rozniechi, *Varægiscke Minder i den russiske Heltedigtning* (Copenhagen, 1914), pp. 283-287.

KRIECHEN, "(land of the) Greeks" "Greece" (Germ. *Griechenland*), mentioned in 1339, 1 in the course of a catalogue of Etzel's Slavic and Balkan allies (Hempel 15). Though unreasonable to seek to identify *Kriechen* with strictly Slavic peoples or a strictly Slavic area (as Muth 403) it is, however, not unlikely that by *Kriechen* the poet was here thinking rather, let us say, of Thessaly and Macedonia than of Athens.

Formally *Kriechen* is d.pl. of *Krieche*, wk.m., "a Greek;" on this use of the d.pl. see under *Burgonden*. The ethnic name, OHG *Chrêchi*, *Chreachi*, *Kriachi*, MHG *Krieche*, OE *Cré(a)cas* (Mezger 9), corresponds exactly to Goth. *Kreks*, pl. *Krekos*, transmitted to the West-Gmc. world through Arian-Christian channels; all look back ultimately to Lat. *Graecus* with monophthongal *e* and with the Goth. sound-substitution of *K-* for *G-* (Flasdieck, *Anglia Beiblatt*, XL [1929], 342-343). Mod. Germ. *Grieche* with *G-* for MHG *K-* shows, in common with other mod. Gmc. languages, a learned refashioning after classical pattern; see *NED* under "Greek," sb. and cp. *Rîn* "Rhein," below. Gk. Γραικοί Lat. *Graeci* (whence *Graecia*), also *Grai*, is supposedly originally the name of a NW Greek border tribe, but of uncertain origin and etymology (PW XIV [1912], 1693-1695). The ancient Greeks' own name for themselves was ’Αχαιοί (Achaeans), Δαναοί (Danai, Danaoi), later and until today Ἕλλενες (Hellenes), country Ἕλλας (Hellas). See further Metzenthin 37 under "Grik(k)land;" Feist 314 under "Kreks;" A. Walde, J. B. Hofmann, ed., *Latein. etymol. Wtb.* (3d ed., Heidelberg, 1930 ff.), I, 616 under "Graecus," for etymological discussion and references.

(*EIN*)*KÜELER BRUNNE*, see (*EIN*) *KALTER* (*KÜELER*) *BRUNNE*, above.

LOCH, m.n., mentioned in 1137, 3 as the point on the Rhine near which Hagen sank the Nibelung treasure (cp. 1742, 3; 2371, 3). There is no surviving place of this name (i.e., Loch, Loh, Lohn) in the region in question and it may well be regarded as a lost site. There is a tendency (e.g., Bartsch, de Boor, Tonnelat 96) to identify this *Lôch* with a Lochheim, on the Rhine between Mainz and Bingen, but all early forms of *Lôchheim* are with *-heim* (F-J II, 126).

The name *Lôch* is the common toponymic word, OHG *lôh*, OE *léah* (cp. the Engl. names Lea, Lee, Leigh, etc.), meaning "grove" "clearing overgrown with brush or second growth;" it is common alone and in compounds; see Helbok 85-86; Kluge-Götze under "*Loch*," m.

LORSE (*C*-text only), Lorsch, Hesse, site of a Roman castrum and *ca.* 15 km. across the Rhine from Worms. Andree 68 G1; Baed. *Rh.* 346; Baed. *SG* 185. *Lôrse* is mentioned in stz. 1142 *passim* as the site of a (Benedictine) monastery (*klôster*), said to have been founded and richly endowed by Sîvrit's mother Uote, with contributions from Kriemhilt. Uote also built near-by a castle (*burc*) where she invited Kriemhilt to live with her. Kriemhilt had Sîvrit's remains translated from Worms (see under *Wormez*, p. 134, below) to *Lôrse* but did not get around to moving in with Kriemhilt before Etzel's proposal of marriage reached her. On the abbey church at Lorsch, founded in 763, see Dehio *SWD* 222-223. The story here of Uote's supposed connection with Lorsch is apocryphal; see Tonnelat 97-98; Bohnenberger *PBB* XLII (1917), 525-533.

For forms see Oesterley 408; F-J II, 44-45; Sturmfels *EL* 90. The oldest forms of the name are *Lauresham, -haim*, and the like, later *Laurissa, Lôrshi. Lôrich*, looking back to a Celto-Roman *Lauriacum* (represented in many Lorch-names), in turn probably based on a Celtic clan-name *Laurius* (Holder II, 160).

LYBIA, LYBIAN, Libya (Germ. *Libyen*), in ancient geography North Africa W of Egypt, later applied to Cyrenaica, is mentioned in 364, 2 as a source of silk (*sîde*, 364, 2) and in 429, 3 as a source of *pfelle*, a MHG term designating now a fine woolen material, now velvet or the like. *Lybîâ(n)*, through Lat. *Libya*, continued to be well-known throughout the Middle Ages (see Langlois 395 under "Libe"); the poet Chaucer (d. 1400) mentions, e.g., that portion of the Sahara still known as the "Libyan Desert" ("the desert of Libye," *House of Fame*, l. 488). In conjunction with *Marroch* and, perhaps, *Azagouc* and *Zazamanc*, the poet may have been trying to suggest what one might today think of as Barbary or the Saracen countries along the north coast of Africa.

Behind this name lies Lat. *Libya*, Gk. *Λιβύν* (people: *Λίβυες*), occurring in various medieval languages as OFr. *Libe, Libie, Lubie*; OE *Libia, Libium*; ME *Libie*: ON *Libia* (Metzenthin 64-65). The name seems to appear earliest as Egyptian *Rbw, Lbw*, probably pronounced "Lebu" or "Libu" and designating an ethnic group settled W of the Nile. Cp. Heb. *Lehabîm* (*Gen.* x, 13; *Vulg. Laabim*), also later *Lubim, Lubim*; see further PW 25 (1926), 149 ff. ("*Libya*, 2"), etymology col. 150-151; *EI* XXI, 59-60 ("Libia"); Egli 12 under "Africa".

MARROCH (*DAZ LANT*), the Morocco district, i.e., the region centering on the present capital of South Morocco in NW Africa (Germ. *Marokko*), now *Marrâkesh*, earlier Arab. *Marâkush*, which with *Lybîâ(n)* is mentioned in 364, 1 as a source of silks (*sîden*, 364, 2); see under *Arâbî(n)* for other lands mentioned in similar connections. In effect, this name perhaps more or less corresponds to modern territory of Morocco, though in the days of the *NL* poet the city of Morocco was but one of many lying within the confines of the dominions of the Almohed which in Africa extended east to a point near Tripoli. On "Marrakesh" (city) and "Morocco" (region) see further *The Encyclopedia of Islâm*, Vol. III (1936), *s.vv.* In conjunction with *Lybîâ(n)* and, perhaps, *Azagouc* and *Zazamanc*, the poet may have merely been trying here to suggest what one might think of as Barbary or the Saracen countries along the north coast of Africa. The MHG name is presumably based on OFr *Maroc* (Langlois 437) vs. mod. Germ. *Marokko* from Ital. *Marocco*.

The native name *Marâkush*, etc. is of uncertain etymology and may be of either Berber or Arabic origin: if the latter, Prof. William Thomson of Harvard Univ. has suggested to me that this may be a corruption of Arab. *marâkiz*, pl. of *markaz* "military post," "government seat;" Sturmfels EL 97 interprets *Marrâkesh* as "the adorned (place)", reflecting the natural beauty of its site.

MEDELICKE, Melk (var. Mölk) at the confluence of the Danube (*Tuonouwe*) and the Mölkbach, right-bank tributary, Lower Austria, and site of a monastery founded in 1089 (Tonnelat 330). Andree 77 D1; Baed. *AH* 134. It is mentioned in 1328, 2 as a point on the Nibelung Route (*Strâze* III) between Pöchlarn (*Bechelâren*) and Mautern (*Mûtâren*): the local lord Astholt entertains

Kriemhilt as she passes through. See Tonnelat 330-331; Pichler II, 167, for *Namara*, old settlement at or near Melk.

Forms in Oesterley 438, F-J II, 258-259, 1569. In *AfslPh* XLII (1928/29), 256-257, Steinhauser plausibly suggests a derivation from Pr. Slav. **medjîlica* "frontier river" "forest stream", applied originally to the Mölkbach; see Steinhauser 19, n. 2, on the loss of *d* in the mod. name. For additional but less promising suggestions see Weinberg 62.

MER, n., "sea," quite possibly with special reference to the Adriatic and conceived by the *NL* poet as a southern terminus or boundary of sorts of the Holy Roman Empire; so Lunzer in *ZfdA* LXVII (1930), 140-144. It is mentioned by Gîselher in 1244, 2 as one of the limits of Etzel's domains. The whole line runs "*Vome Roten zuo dem Rîne, von der Elbe unz an daz mer*" and has been considerably discussed. The structure and wording of the line may, to be sure, have been somewhat controlled by metrical exigencies and hence not be accurate or even intended so to be, but, if with Lunzer one starts with a map of the Holy Roman Empire under the Hohenstaufen (1138-1254), it is clear that a straight line drawn due N up the Rhone (*Roten*) to the *mouth* of the Rhine gives approximately the western boundary, including the Kingdom of Arles, while a line SSW-NNE from the upper Elbe to, let us say, Pola on the Adriatic, gives a fair indication of the eastern.

The alternate possibilities that have been considered are identifications with the North Sea and the Baltic. However, in *NL* the North Sea is regularly referred to as *Sê* (*q.v.*), and furthermore, *mer* with reference to the North Sea would be ambiguous, since both the Rhine and the Elbe empty into it. That the poet could have intended the Baltic (Germ. *Ostsee*) seems rather unlikely, since the Slavic zone at that time really reached to the Elbe. Unfortunately no help is to be had from Matthias 43-44 under "Adriatisches Meer". Though by no means mathematically demonstrable, Lunzer's interpretation seems on the whole to be the best thus far offered. Etzel's domains as here described by Gîselher may be compared with an earlier statement about the western limits of the Hunnish kingdom by the poet of *Waltharii poësis* 7-8 (Smyser-Magoun 112), where the Huns are said to have "pressed on to the regions of the shore of the (Atlantic) Ocean" (see Lichtenberger 234-235). Lunzer cites various mediaeval German verses in which boundaries, usually four and often in terms of rivers, are given; he might well have added the well-known modern example from the "Deutschlandlied:" "Von der Maas bis an die Memel, von der Etsch bis an den Belt," with four rivers like Walter von der Vogelweide's four (*art. cit.*, 143, bottom). The mention in the "Deutschlandlied" of the Etsch (Ital. *Adige*), emptying into the Adriatic, bears comparison with Lunzer's interpretation of *mer* in *NL*.

METZE, f. str. and wk., Metz, at the confluence of the Seille and the Mosel, Lotharingia, mentioned in 9, 2; 11, 2; 81, 1; 116, 2; 119, 1; 231, 1; 869, 1; 1184, 2, to identify Ortwîn, Gunthere's seneschal (*truhsæze*, 11, 2) in terms of his home (*von*[*e*] *Metzen*, except in 1184, 2: *von Metze*); thus like *Alzeye* and *Spîre*, *Metze* serves a purely decorative function in the geography of the poem. In *Waltharii poësis* 582-83, 644 (Smyser-Magoun 125, 126), dealing with persons legendarily contemporary with those of *NL*, the governor (*praefectus*, *metropolitanus*) of Metz is Camalo (see Althof II, 184-85, 196). In the days of the poet Metz was in the Duchy of Upper Lorraine and was ruled by a bishop-burgrave whose office expired *ca.* 1200 when Metz became a free imperial city. See Findlay Muirhead—M. Monmarché, *North-Eastern France* (London, 1922), 207-208. For frequent mention in the OFr. chansons-de-geste see Langlois 448 under "1. *Més*, etc;" Andree 67B2.

Metz, an ancient Gaulish settlement and Roman town, was earliest known as *Divodurum* "stronghold of the gods;" it was the seat of the *Mediomatrices*, whence *Divodurum Mediomatricium*, *Civitas Mediomatricium*, and with the later common substitution of tribal for place-name *Mediomatricia*. The old town was destroyed by the Huns *ca.* 450. Later a shorter name *Mettis*, *Metti*, with the adj. *Mettius* (*ager*, *fundus*), came to used and yielded OHG *Mezzi*, MHG *Metze*. See Holder II, 580; Oesterley 445; Egli 602; F-J II, 277; Gröhler I, 269. The formation and origin of *Mettis* has been discussed: Longon 103 §407 suggests that it is independent of *Mediomatrices*, etc. and may originally have been applied only to some certain portion of the old town; J. Vendryes, 'Le nom de la ville de Metz,' *Mémoires de la Societé Linguistique de Paris*, XXIII (1927), 52, urges more plausibly that *Mettis* is a toponymic hypocorism based on the old ethnic name.

MEUN, m., the Main R. (Germ. *der Main*, Fr. *le Main*), chief right bank tributary of the Rhine (*Rîn*); the two sources, der Weisse and der Rote Main, unite at Kulmbach in Lower Bavaria; the stream then flows past Bamberg, Würzburg, divides the Spessart (*Spehtshart*) and Odenwald (*Otenwalt*), continues past Aschaffenburg and Frankfurt, joining the Rhine above Mainz, with which name it is etymologically unconnected. It is mentioned in 1524, 1 as a boundary, inferentially at least, of Eastern Franconia (*Ostervranken*).

Like *Rîn*, the name is pre-Germanic and looks back to Celt. *Moinos*, Celto-Lat. *Moenus*, *Moenis*, m., (Holder II, 606), formed on the IE root *mei-* "wander" "go" (WP II, 241, under "3. mei-"; Much *Germania* 257), hence means "the wandering, moving one;" on the gender see Karsten 58, 62. The name is recorded in OHG and later as *Moin* (Oesterley 422; F-J II, 307-308, 1570; see also Otto Springer, *Die Flussnamen Würtembergs u. Badens* [Stuttgart, 1930], p.55); on the Celt. vocalism (*oi* vs. Gmc. *ai*) see Much in *Reallexikon* III, 173, under "Mainsueben," §4. The unusual spelling *Meun* evidently shows a (sporadic?) rounding after *m* of *ai*(*ei*) to *eu* (cp. Behaghel 297 §264).

MISENBURG (*DIU RICHE*), f., old Germ. name of Hungar. Moson(-Magyaróvár). Germ. Wieselburg, Hungary, on a southern arm of the Danube (the Small or Wieselburg Danube) between Pressburg (Hungar. *Pozsony*, Slav. *Bratislava*) and Komorn (Hungar. Komárom) in the Middle Ages an important river port (Tonnelat 334-335; 340-341). Andree 79 D4; Baed. *AH* 445. Mentioned in 1377, 1 as a station of the "Nibelung Route" (*Strâze* III) where the party embarks on luxurious river boats or barges (stz. 1377-1378) for *Etzeln burc* (1379, 1).

Forms in Oesterley 763 under "2. Wieselburg" (cp. "1. Wieselburg," near Scheibbs, Lower Austria); Egli 1028 under "Zwei"; F-J II, 285; Schiffmann II, 531-532 for Austrian Wieselburg and other Wiesel-names. Older forms *Zuisila* (see additionally F-J II, 1475) and the like, representing OHG *zwisila*, f., "forked branch," OE *twisla*, m. "confluence" (cp. such English place-names as Twizel, Twiston, situated at the fork of two streams), survive in the Wiesel-name. The older alternate name in *Misen-* (var. *Mesen-*, *Miesen-*) may look back to MHG *mies*, n. m., "moss"; cp. the Lower Austrian *Miesenbach*, MHG *Mise*(*n*)*bach* "mossy brook" in Steinhauser 30; or may it be Slavic?

MOERINGEN, commonly and probably correctly identfied with Gross-Mehring, Lower Bavaria, *ca.* 15 km. below Ingolstadt; Hempel 6; Tonnelat 337.

Andree 70 F4. It is mentioned in 1591, 1 as the point where the Burgundians en route to *Etzeln burc* crossed the Danube and where Hagen slew the ferryman Else. It is evidently thought of as being on the boundary of *Gelpfrâtes lant* (cp. 1553, 3). On the poet's choice of *Mœringen* vs. Ratisbon (MHG *Reinsburc*, Germ. Regensburg) for the crossing see Tonnelat 337. On this much discussed ferryman-episode or "Donauüberfahrt" see Heusler 79 ff., Tonnelat 120-122, 251-254; Wesle in *PBB* XLVI (1921/22), 231-247; Mitzka *ibid.*, LV (1930), 282-292. See also Weller *ZfdA* LXX (1933), 50-51 and map (p. 53).

Forms in F-J II, 250 §7, and see Oesterley 452 under "Moehringen" for the name-type. The name, OHG *Môringe(n)*, may in some instances look back to a pers. name *Mauri*, etc. (so F-J *loc. cit.*); Helbok 14-19 for *-ingen*-names and their distribution.

MUTAREN, Mautern, Lower Austria, situated on the Danube. Andree 71 D1; Baed. *AH* 135. It is mentioned in 1329, 3 as a town of transit between Melk (*Medelicke*) and the Traisen river (*Treisem*), where Kriemhilt was in some way entertained (1329, 4); the road to Mautern had been pointed out to her by Astholt, lord of Melk (1328, 2; 1329, 1). The Benedictine abbey of Göttweig, founded in 1072, is conspicuously placed on a hill overlooking the town (see Tonnelat 328-330). On Mautern elsewhere in MHG heroic story see Schneider I, 276-277. An older Celtic settlement on or near this site was Celto-Lat. *Aelia Cetiensis*, *Cetium* (Celt. *cêto-* "forest"; Holder I, 1001, under "Cetion"; WP I, 328-329) and thus connected with the old name of the Wiener Wald (Steinhauser 7); F-J I, 1669.

Forms in Oesterley 433; F-J II, 359. *Mûtâren* looks back ultimately to Goth. *motareis* "toll, tax collector," perhaps more properly to the Goth. d. pl. *motarjam* in such phrases as "at the toll-collectors" (cp. *Vergen*) which is presumably the original meaning of the name. On this word in Germ. see Feist 365 under "mota;" Hellquist under "1. muta;" Kluge-Götze under "Maut;" Weinberg 62. On the possibility of Rugian transmission of the name see Schwarz in *AfslPh* XLII (1928/29), 277-278.

NIBELUNGE, m. pl., "Nibelungs." The designation *Nibelunge* is used in *NL* with three applications.

I. The elfish owners of the famous treasure, guarded by Alberîch, of which Sîvrit possessed himself. They are mentioned in 87, 2; 89, 3; 90, 4; 484, 4; 502, 3; 774, 3; 1323, 1; 1741, 2; 1742, 2. In terms of *NL Nibelunge* means "followers and descendants of *Nibelunc* (mentioned in 88, 3; 89, 1; 93, 1; 98, 3; 492, 2; 739, 2; 1523, 1; 2347, 3). This Nibelunc, like his sons the lay figures Nibelunc and Schilbunc (87, 3; 91, 1) appears to be an eponymous constructed *ad hoc* by the *NL* poet (see D.v. Kralik, 'Nibelung, Schilbung und Balmung,' *Wiener prähistorische Zs.*, XIX [1932], 324-348; E. Schröder, *ZfdA* LXI [1924], 36-37, on Schilbung); his domain, ordinarily *Nibelunge-lant* I, is referred to as *Nibelunges lant* in 1116, 3. Etymologically *Nibelunge*, like ON *Niflungar*, means "those associated with the land of darkness, the foggy Underworld" and is cognate with Lat. *nebula*, Germ. *Nebel*, and the element *nifl-* meaning "Underworld, Hades" occurring in several ON compounds. These *Nibelunge* I are thought of as resident in *Nibelunge-lant* I, below. See further Heusler in *Reallexikon* III, 314-315, under "Nibelunge;" Tonnelat 49-50; 203-206, 247-249; Schneider I, 81-82, 205-206; Lichtenberger 87-90.

II. The 1000 warriors selected from 3000, which Sîvrit took as vassals from *Nibelunge-lant* I to *Nibelunge-lant* II. They are mentioned in 501, 3; 597, 4;

617, 4; 1030, 2; 1058, 4; 1095, 3 (including King Sigemunt); cp. 580, 2.

III. The Burgundians, by extension and transference so designated as being the last owners or custodians of the Nibelung treasure, mentioned in 1, above. Much, if not everything points to this being an ancient name for the Burgundians (*Burgonde*); in the Eddic lays *Niflungar* refers to the sons of Gjúki (also called *Gjúkingar*) and their vassals, i.e., Burgundians (cp. *vin Borgunda* for Gunnar-Gunther in *Atlakviða* 18, 3). The striking fact that this use of the term (vs. that of I, above) occurs first as late in the poem as 1526, 2 is almost surely to be explained according to Heusler (55, 76, 111, 176) as a survival in *NL* of a usage originally peculiar to the text of the lost *Nibelunge Nôt*, whose title is preserved in 2379, 4. On the application of this epithet to the Franks rather than the Burgundians see under *Burgonde*, above. Instances of this sense occur in 1526, 2; 1527, 2; 1715, 2 (cp. 1713, 1); 1726, 4 (referring to Gunthere); 1737, 2; 1870, 4; 1900, 2; 2175, 2 (cp. 2167, 4); 2379, 4. I would here say that I no longer entertain the slightest doubt that *Franci Nebulones* of *Waltarii poësis* 555 means "Nibelung Franks" and should be thus translated; see Smyser-Magoun 124, Tonnelat 248.

NIBELUNGE-LANT, n., "land of the Nibelungs." For the etymology see under *Nibelunge*, above, and on this type of determinative compound under *Burgonden-lant*. *Nibelunge-lant* is used in two senses, answering to senses I and II of *Nibelunge*. On the poet's scrupulous avoidance of employing *Nibelunge-lant* in sense III of *Nibelunge* see Heusler 284-285, and cp. Metzenthin under *Niflungaland*.

I. The land once ruled by the two brothers Nibelunc and Schilbunc (cp. 87, 3; 91, 1), where Sîvrit won Nibelunc's great treasure (88, 3; 89, 1; 91, 3), the sword Balmunc (93, 1; 95, 1), and the *tarnkappe* (97, 3) and where he later acquired 1000 retainers selected from 3000 candidates (480, 3; 501, 3; 505, 1-2) and over which he was ceded a certain sovereignty (95, 4, and cp. 498, 3; 500, 3). In this primary sense *Nibelunge-lant* is first mentioned in 92, 3 and 94, 4 in the course of a narration by Hagen (87-99) of what is to be viewed as Sîvrit's original journey thither; on that occasion he is said to have acquired the treasure and other items mentioned above. His second journey, made from *Isenstein* in Iceland, constitutes the main theme of canto viii, more precisely stz. 479 ff. He arrives in *Nibelunge-lant* after a sea-voyage from Iceland of a day and a night (484, 1), covering 100 long miles or even larger unit of distance (*hundert langer raste*, 484, 3), possibly though not necessarily thought of as helped by the *tarnkappe* (Lichtenberger 91); the return voyage to Iceland is alluded to in the phrase *über fluot* "overseas" (504, 3). In 484, 2 it is referred to as *ein lant*, whose inhabitants are *Nibelunge* (484, 4). In 492, 4 it is called *Nibelunge-lant*, and is evidently viewed by the poet as a large island (*ein wert vil breit*, 485, 1), with *wert* clearly not in the sense of mod. Germ. *Werder*; here he moors his ship. Of islands within any such distance of Iceland as suggested above one can only think of the Faroes, but it is doubtful if the poet here had any precise or real locality in mind. Later, in 739, 3 this land is identified with Norway (*Norwœge*), reached in three weeks (739, 1) from Worms; see further under *Norwœge*. In 1120, 3 this *Nibelunge-lant* is referred to as *lant*. On his arrival in what Sîvrit presumably viewed as his fief (on his right to the crown of *Nibelunge-lant* see J. Lunzer, *ZfdA* LXVIII [1931], esp. pp. 256-257), he was vigorously opposed by a giant gate-keeper (487 ff.) and by the fierce old dwarf Alberîch (493 ff.). Though he set out from Iceland wearing the *tarnkappe* (482, 2), he does not seem to have worn it in *Nibelunge-lant*, where he is obviously visible. His identity is repeatedly demanded and he is spoken of as *der unkunde man* (486, 3). The motivation of all this is highly defective, the narrative a confused blending of two traditions. As the original home of the treasure *Nibelunge-lant* is somewhat incidentally mentioned in 1271, 1, and 1278, 3, though this last reference may be in sense II, below; cp. *Nibelunges lant* (Bartsch: *Nibelunge lant*) of 1116, 3, noted under *Nibelunge* I, above. Something is told of the topography and architecture of the region: It is, as already noted, an island whose outstanding feature is a mountain (*berc*: 88, 2; 89, 2; 97, 2; 493, 1; 722, 3; 1121, 1; 1122, 3), in which the Nibelung treasure was originally kept. The beach is *sant* in 524, 4. According to 95, 4 there were several strongholds (*bürge*) of which one *burc*, located on the mountain (485,3), is the principal scene of the action of canto viii. This is mentioned in 487, 1; 492, 1; 739, 2 (specifically placed in *Norwœge*); 1027, 3; in 506, 2 it is referred to as the "court" (*ze hove*). In this main *burc* is a hall (*sal*, 492, 2); there are portals (*porten*, 486,1) and a main gate (*tor*, 486, 3; 487, 3; 488, 1; 489, 3); keeps (*türne*) and a treasury (*kamer*) are mentioned in 1125, 3. Elements of this part of *NL*, with Wotan and Loge substituting for Sîvrit as subduers of the protean Albrich, are utilized by Wagner in *Das Rheingold*, Sc. ii (*ad fin.*) and Sc. iii.

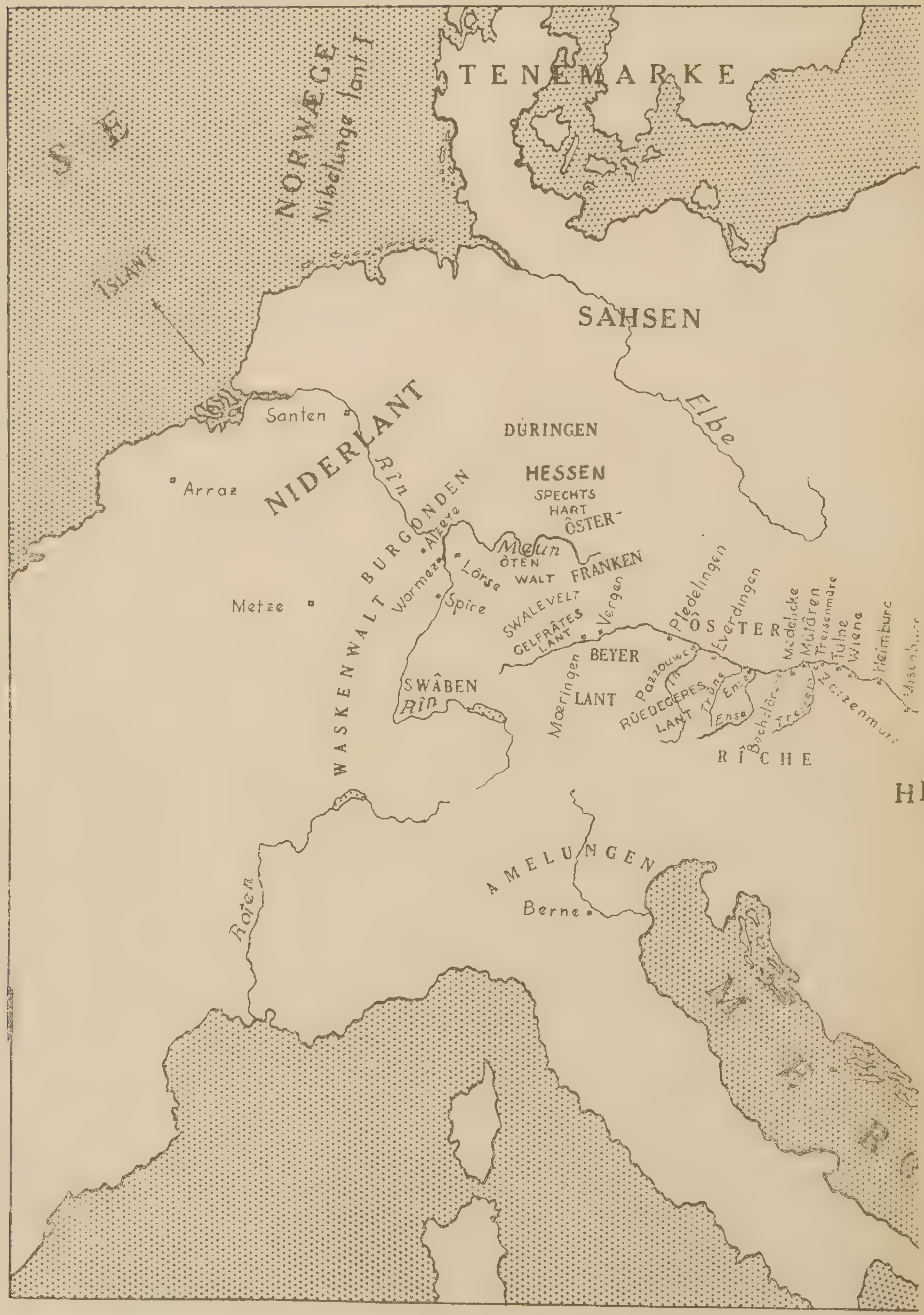
II. In the derived, secondary sense of Sîvrit's domains centering on Xanten (*Santen*) in *Niderlant*, i.e., in the days of the poet the Duchy of Brabant, *Nibelunge-lant* is used in 778, 3 (see under *Norwœge*); 1003, 3; 1011, 4; 1015, 2; 1071, 3; 1083, 3; 1085, 3 (a direct equation with *Niderlant* is suggested by 1098, 3); 1392, 1; 1724, 4. Cp. also *lant zen Nibelungen* (721, 1). For other designations of Sîvrit's homeland with which *Nibelunge-lant* II varies, see *Nibelungen*, *Niderlanden*, *Niderlant*, *Sigemundes lant*, and *Sîvrides lant*, and Lunzer ZfdA LXIX (1932), 277 ff., esp. 285 (bottom).

The application of the term is ambiguous in two passages where it defines Sîvrit's warriors: *tûsent recken ûz Nibelunge lant* (524, 3) and *sîne recken von Nibelunge lant* (1027, 1); here these warriors may, no doubt, be thought of either in terms of their original home (I, above) or of the land (II, above) to which Sîvrit had brought them. The point is, to be sure, of small consequence.

NIBELUNGEN, "(land of the) Nibelungs," synonymous with *Nibelunge-lant* II, above. It is used in 580, 2 to identify Sîvrit's Nibelung retainers (*Nibelunge* II). Formally *Nibelungen* is the d. pl. of *Nibelunc*; on this use of the d. pl. see under *Burgonden*.

NIDERLANDEN, formally d. pl. of *Niderlant*, *q.v.* for meanings and uses; cp. mod. Germ. *die Niederlande*, pl. and see Curme 96 §83 under "Land." On this use of the d. pl., here by analogy with ethnic names, see under *Burgonden*. *Niderlanden* is used (I) for the name of the country (20, 1); (II) as an epithet for Sîvrit (1018, 4; 1733, 2); and (III) as an epithet for Sigemunt (761, 1).

NIDERLANT, n., lit. "the low-lying country or region (of the lower Rhine)," answering formally to Germ. *die Niederlande* (pl.), Du. *Nederland*, refers to a region centering on Xanten (*Santen*) on the lower Rhine, viewed as the homeland and kingdom of Sigemunt and Sîvrit (Heusler 182). In the poet's day this region lay within the Duchy of Brabant. A rendering "The Low Countries" "The Netherlands" would be anarchronistic, since these terms are in a political sense first properly applicable to the various provinces ruled *ca.* 1545 by Charles V, yet I can at the moment think of no really suitable English translation, though in German "Niederrhein" would no doubt do (so Frings, "Siegfried, Xanten, Niederland," *PBB* LXI [1937], 367). The name is used (I) to refer to Sîvrit's homeland, varying with *Niderlanden*, *Nibelunge-lant* II, and *Sîvrides*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HESSEN
SPECHTS HART
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FRANKEN
BURGONDEN
Alzeye
Wormez
Lôrse
Spîre
Metze
WASKENWALT
SWALEVELT
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Vergen
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BEYER LANT
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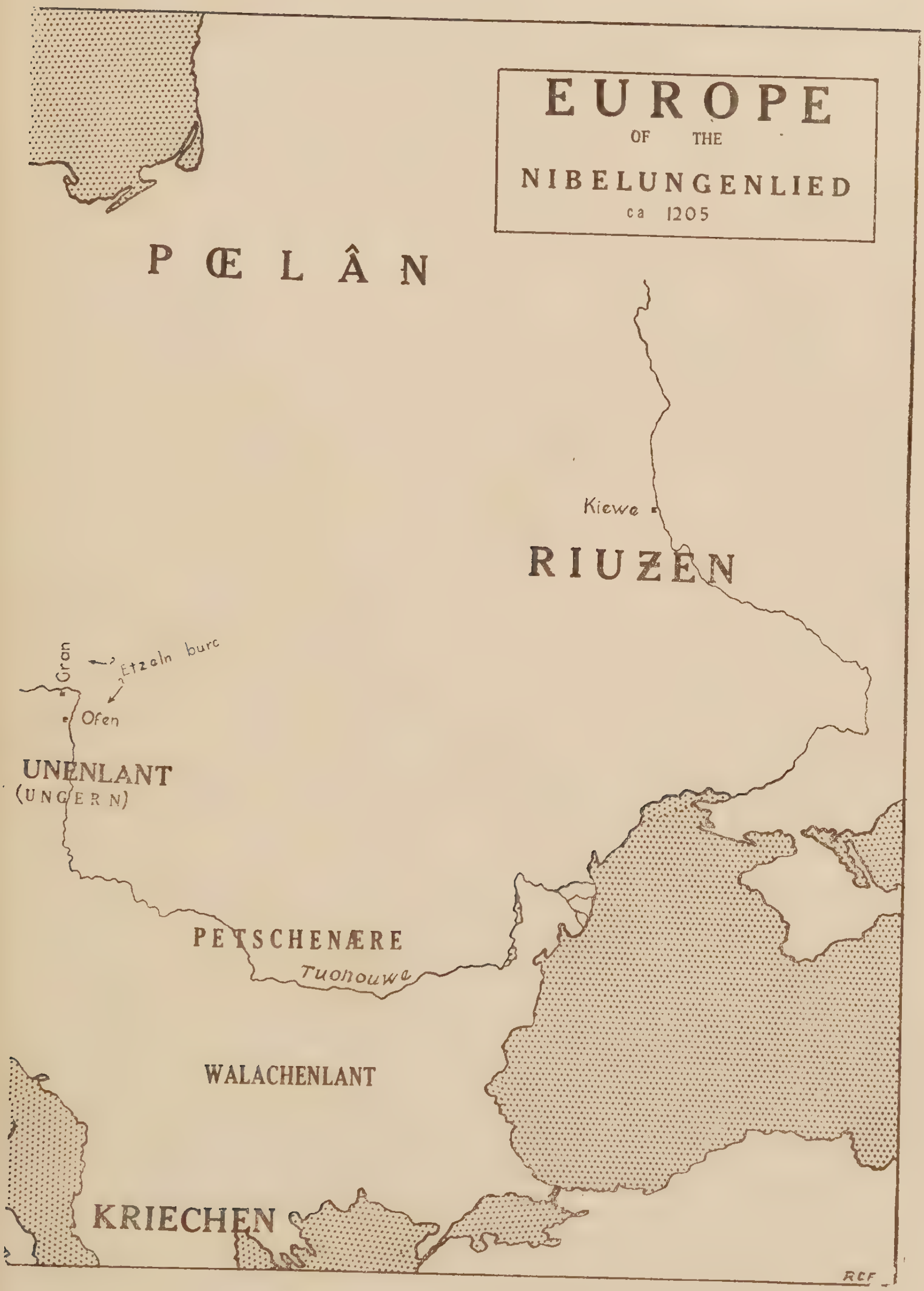
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WALACHENLANT
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lant; (II) most frequently as an epithet of Sîvrit (*helt, künic von N.*), on whose rights to the crown of *Niderlant* (one of his three crowns) see J. Lunzer *ZfdA* LXVIII (1931), esp. pp. 255-256; (III) to define or describe Sîvrit's retainers; and (IV) with reference to the inhabitants of the region. Instances of these uses are: (I) 168, 3; 199, 3; 227, 3; 290, 2; 549, 3; 1098, 3; 1368, 1; (II) 90, 3; 118, 1; 131, 3; 214, 2; 258, 1; 272, 2; 615, 4; 688, 1; 855, 3; 883, 2; 934, 2: 973, 1; (III) 204, 2; 888, 3; (IV) 713, 4. In sense I it is referred to briefly as *lant* in the headings to cantos xi and xviii; 28, 3; 29, 4; 322, 3; *bürge* are mentioned in 39, 2. See further J. Lunzer, 'Niderlant u. NL lant,' *ZfdA* LXIX (1932), 277-295; his suggestion (*art. cit.*, 286-87) that *Niderlant* ever meant "Underworld" (Land unten, Unterwelt) and was thus once to be equated with *Nibelunge-lant* I, strikes me as most unpromising.

Finally I note "*here van Nederland*" (*art. cit. infra*, p. 6, l. 11), with *Nederland* applied to Zegevrijt (Sîvrit), in the late thirteenth-century Du. translation of *NL*, of which is preserved only a fragment answering to *NL* 943, 3-963 and 1037-1057, ed. G. Kallf, "Het Nevelingen-Lied," *Bibliotheek van Middelnedersche Letterkunde*, Fasc. 38 (Groningen, 1885), 1-8. *Here van Nederland* renders *Sivrit den herren* of 1039, 3 and is the only place-name in the Du. fragment.

The first element of the name is MGH *nider*, adv. "low" "nether;" for similar use of an adv. prefix cp. *Osterlant*, *Ostervranken*, below; the second element is the common sb. *lant*, n., in d. sg. occasionally with -*e* (see Paul-Gierach 99 §123, n. 5).

NINNIVE, Nineveh, long the capital of the ancient Assyrian Empire, on the east bank of the upper Tigris R., destroyed in 612 B.C. and permanently deserted; Mosul, important city of 'Iraq, facing the ruins of Nineveh on the opposite bank of the Tigris, is on a caravan route to Persia. *Ninnivê* is mentioned in 850, 1 as a source of silk (*sîde*); for other oriental names introduced in a similar connection see under *Arâbî(n)*. Often mentioned in the Old Testament as a great city, the tradition of Nineveh's former glory lingered on in the Middle Ages, where the substantial identity of Mosul with Nineveh was almost certainly realized. As evidence of the familiarity of the name in the Middle Ages see, e.g., the references in the OFr chansons-de-geste in Langlois under "*Nineve(nt)*" and R. W. Rogers, *A History of Babylonia and Assyria* (6th ed., N.Y., 1915), I, 106 ff.

The oldest spelling of the name is *Ni-na-a*, still used in the ninth century B.C.; later it appears as *Ni-nu-a*, apparently looking back to **Nin-wa*, as suggested by the Heb. spelling *Nînwêh*. Arab. *Ninaway*, Gk Νινευί etc. The name is apparently derived from *Nina*, a river-goddess, perhaps conceived as having the form of a fish; see Sidney Smith, *Early History of Assyria* (London, 1928), p. 103, and cp. the OSemit.(?) or Hurrian(?) word *nun* "fish;" it is not derived from the name of the goddess *Nin*, Sumer. *nin* "lady", nor from *Ninus*, legendary eponymous of the city.

NORWAEGE (IN DER MARKE), Norway, mentioned in 739, 2-3, as the site of *Nibelunges burc* (see under *Nibelunge-lant* I, above), with Sîvrit and Kriemhilt in residence. It is said to be a three weeks' riding distance (739, 1) from Worms, whence an embassy is dispatched to fetch the noble couple (733 ff.). When the party finally sets out for Worms, they are said to be leaving *Nibelunge-lant* (778, 3). If the poet is here thinking of the Nibelungs as *Nibelunge* I and as living in Norway, three weeks is actually no impossible time for this trip. While it is not to be imagined that the poet here had any precise itinerary in mind, it may, however, be noted that Nikulás, abbot of the Benedictine foundation at Munkaþverá in Iceland indicates as of *ca.* 1154 that a journey from Aalborg in Denmark to Worms might take some eighteen days (see Magoun, *Mediaeval Studies*, VI [1944], 347, 349). As applied to Norway here *in der marke* would mean, I suppose, "out on the frontier" or the like and suggest a remoteness from the center of things (Xanten or Worms); it surely does not refer to the Finmark district of Norway. Earlier in the poem (484, 1) Sîvrit is said to have taken a day and a night to reach *Nibelunge-lant* I from Iceland, but if at that point the poet had Norway in mind (which is quite uncertain), the time would be far too short, since a sailing trip from Iceland to Norway would normally require about a week (see Magoun, *art. cit.*, p. 347).

The Norwegian locale of Sîvrit and Kriemhilt's residence is at variance with other indications in cantos xi and xii. After their wedding Kriemhilt and Sîvrit (in 688, 1 described as *der herre ûzer Niderlant*) return home (*wider ze lande*, 689, 2); this home-land can here only be understood as *Niderlant* and by inference sspecifically as Xanten. Once home, Sîvrit receives the crown from Sigemunt (713, 3) to the delight of his subjects (*die von Niderlande*, 713, 4). Shortly after this we read that the *lant zu Nibelunge* (721, 1 and again in 778, 3) served Sîvrit, and it is from *Nibelunges lant* (1116, 3) that Kriemhilt had the great treasure brought to Worms; cp. 1724, 4. Is this latter *lant* thought of as a part of *Niderlant* or as a remote fief in Norway? Why do we have no statement about how the royal couple reached *Norwœge*? Elsewhere in canto xii Sîvrit's domain is simply called *Sîvrides lant* (*q.v.*). These obvious difficulties encouraged Burg, *ZfdA* XLI (1901), 128-130, to propose an emendation of *Norwœge* to *Niumagen* (Nijmegen, prov. Gelderland, Netherlands) as the site for *Nibelunge-lant*, but this drastic solution has not been well received (cp., e.g., Tonnelat 364, n. to p. 70; Heusler 182, 285). Some confusion certainly reigns, though it is probably impossible to disentangle apparently conflicting geographical traditions (Lichtenberger 94-96). In *Ths.* Sigurðr and Grimhilldr marry (II, 37-39) and with Gunnar and the others (II, 43) share the rule of *Niflungaland*, i.e., *Burgonde-lant* of *NL.*

MHG *Norwœge* corresponds to ON *Norðr-vegr*, *Nóregr*, sg. (cp. *norðr-vegar*, pl., of Edda, *HH* I, 4), OE *Nor(ð)weg*, the latter meaning "northern route," then "parts, regions"; cp. ON *Austrvegr*, *Vestrvegr*. *Orkneyinga s.*, ch. 2, wrongly derives the name from Nórr Thorrason. See Hellquist under "Norge;" *Reallexikon* III, 345; D. A. Seip, *Norge. Om Navnet på vort land fra de eldste tider av* (Oslo, 1923). Mod. Germ. *Norwegen* shows *-en* by analogy with names of countries based on ethnic names; see under *Burgonden* and cp. *Niderlanden*. The spelling *œ* does not, of course, represent an umlauted *a* but is rather an upper German orthography for a very open *e* (cp. Paul-Gierach §5, 3 and 6, 1).

(*NUODUNGES*) *MARKE*, st. f., (Nuodunc's) district, march (*NED.*, sb. 3), evidently thought of as extensive (*wît*, 1903, 3), is not identified; it is mentioned in 1903, 3 and 1907, 3 as a region offered by Kriemhilt as a bribe to Blœdel(în), Etzel's brother. In 1907, 1 it is referred to as *lant* and with *bürge*. Nuodunc was a relative (son?) of Gotelint and Rüedeger, who had been slain by Witege (1699, 4), son of Wieland. In *Ths.* II, 227, l. 23, he is described as *hœrtogi Nauðung af Valkaborg*; see Schneider I, 219.

OSTERLANT, n., the Duchy of Austria (Germ. *Österreich*, *Ostmark*), lying along the Danube from near Passow (*Pazzouwe*) in the Duchy of Bavaria (*Beyerlant*) to near Pressburg in the Kingdom of Hungary (*Ungerlant*, etc.) is mentioned as a land of transit in 1329, 2 and 1341, 1 and is, synonymous with *Osterrîche*, below. In the days of the *NL* poet it was ruled by Leopold VI, possibly reflected in the person of Rüedeger (see Heusler 170-171). The name means "region lying toward the east," i.e., originally Charlemagne's "Mark im Ostland" (see Weinberg 43), and as a real political entity came into existence under the Babenbergs in 976. In *NL* its rivers are *Ense*, *Tuonouwe*, *Treisem*, *Trûne*; its towns *Bechelâren*, *Ense*, *Everdingen*, *Heimburc*, *Medeliche*, *Mûtâren*, *Tulne*, *Wiene*, *Zeizenmûre*, and *Treisenmûre* in *C*.

The first element is MHG *ôster*, adv. "in, to the east" "eastern"; cp. F-J I, 280-288 under "Austar." The same prefix occurs in *Ostervranken*; cp. *Niderlant* for a similar use of an adv. element. OHG *ôstarlant*, MHG *ôsterlant*, is also commonly used in the sense of "Orient," like OE *éastland*, mod. Icel. *austurlönd*; ON *Austrlönd* (Metzenthin 8) is, on the contrary, equivalent to *Austrvegr* and designates the Baltic regions.

OSTERRICHE, n., the Duchy of Austria (OHG *Ostarrîhhi*, Germ. *Österreich*, med. Lat. *Orientale Regnum*), on whose extent and rôle in *NL* see under *Osterlant* with which it is synonymous; it is used in 1336, 4 and 1714, 1. The name means "domain lying toward the east;" for forms see Oesterley 496; 282-284; Egli 664 F-J I.

On the first element see under *Osterlant*; mod. *Österreich* shows *i*-umlaut of MHG *ô* from the *î* in the second following syllable of the compound *-rîche* (Behaghel 292). The med. Germ. name appears in OFr. as *Osteriche*, *Ottrisse*, and the like (Langlois 507 under "1. Osteriche"), *Osteric* in Dante, *Inf.* xxxii, 26, and translated in OE *Eastrice*, ME *Estriche* (*Morte Arthure*, l. 45), ON *Austrríki* (also with other meanings, Metzenthin 8), mod. Icel. *Austurríki*. From med. Lat. *Austria*, *Austrasia* (as if *Australe regnum*!) with quaint adaptation to Lat. *austr-*, *auster* "southern" (cp. Australia) and by sheer coincidence cogn. with Germ. *Oster-* (WP I, 27, top), comes *Austria* of mod. Engl. and several Romanic and Slavic languages (Russ. *Avstriya*) whence, too, presumably, the *Au-* spelling of mod. Fr. *Autriche*. See Egli 664; Weinberg 43.

OSTERVRANKEN, "(land of the) Eastern Franks," "Eastern Franconia" (med. Lat. *Francia orientalis*, Germ. *Ostfranken*), mentioned in 1524, 2 and 1525, 1 as a land of transit on the route from Worms to Etzeln burc. The name *Ostervranken* is in opposition to Rhenish Franconia (med. Lat. *Francia rhenensis*, Germ. *Rheinfranken*), not mentioned in *NL*. As the poem indicates, it lay east of the Main-Neckar line (*gegen dem Meune dan*, 1524, 1) and centered on Würzburg. In the days of the *NL* poet the Franconia name was chiefly used for Eastern Franconia. For forms see Oesterley 186 under "Franken."

Formally *Ostervranken* is d. pl. of *Ostervranke* "an Eastern Franconian;" on this use of the d. pl. see under *Burgonden*. On the element *ôster-* see under *Osterlant*. The second element, ethnic name of the Franks, looks back to a Gmc. adj. *franka-* "bold" "violet" "free;" from the ethnic name comes the Old-Gmc. weapon-name, OE *franca*, ON *frakka*, a kind of spear. See Schönfeld 89-91; Much in *Reallexikon* II, 83, §6; Metzenthin 27-28. From the Neustrian Franks (Kauffmann II, 124 and nn. 10, 11) comes med. Lat. *Francia*, *France* (Schwan-Behrens 116 §199*a*); cp. Germ. *Frankreich*; Neustria, apparently arbitrarily formed on the pattern of "Austria" (see under *Osterrîche*), refers to the regions of Gaul newly (cp. OHG *niuwi*, etc. "new") opened to the Franks in the sixth century.

OTENHEIN (*C*-text only), m., mentioned in 1001, 7 as the village (*dorf*, a word used only by *C* and only here), where the spring (*brunne*, i.e., the *Kalter Brunne*, above) runs, by which Sîvrit was slain. This village is unidentified and may well be an *ad hoc* invention (Lichtenberger 189); in any event it can almost certainly not be associated with Edigheim (Oesterley 145), an old *ing*-name (Braune, 'Otenheim im Nibelungenlied,' *PBB* IX [1883], 553-560, esp. p. 555). The *C*-redactor may perhaps have had in mind the village of Odenheim, a little S of Heidelberg, which enjoyed connections with the abbey of Lorsch (*Lôrse*) (Braune, *art. cit.*). Heusler 320 is uncritical as to the locality, a matter of small importance, but recognizes the localization as the fruit of popular tradition.

Speculation on the element *ôten-* is futile (cp. *Otenwalt*, below); on *-hein* as a var. of *heim*, see under *Heimburc*, *ad fin.*

OTENWALT (*C*-text only), m., the Odenwald, wooded mountains mainly in SE Hesse, mentioned in 911, 3 as the proposed locale of the fatal hunt (see further under *Waskenwalt*), in 1101, 7 as the region in which lies the village of *Otenhein*, above. *Otenwalt* is the C-redactor's sensible, though textually not correct substitution for *Waskenwalt* of the received text (*B*). Andree 68 GH 1; Baed. *SG* 45. See Lichtenberger 188-189; E. Seeger *ZfdU* XVII (1902/03), 366-367; J. R. Dietrich, 'Wo Sîfrit erschlagen ward,' *Heimatbuch f. Hesse-Darmstadt* (1927), pp. 127-135; Georg Volk, *Der Odenwald* (Stuttgart, 1900), pp. 237, 290.

For forms see Oesterley 494; F-J I, 288. The first element is difficult, due to early forms *Hodonu-*, *Odono-*, *Odenewalt*, which would seem to preclude any association with OHG *ôdi*, adj. "deserted" "uninhabited," or with a personal name OHG *Oto*, *Oten* (see Kluge-Götze under "öde"), as hinted at by F-J, Sturmfels *EL* 111, Egli 662-663. For this difficult name Behaghel 372, n. 1, most tentatively suggests (*T*)*outonowald* though this is fraught with great difficulties; on *Toutono-* vs. *Teutono-* see Schönfeld 224 under "Teutoni." The second element *-walt*, m., in the sense "wooded upland, mountains" (Helbok 85) is familiar in such names as Greifswald, Schwarzwald, Wiener Wald, and the like; cp. *-hart* in *Spehtshart*, above. For a similar extension of the meaning of this "forest" word in early English see *NED* under "wold," sb. 1, and in Scandinavian to the meaning "grass-grown land" Hellquist under "1. vall."

PAZZOUWE (*STAT ZE*), Passau, Lower Bavaria (*Beyerlant*, 1296, 3), at the confluence of the Inn and the Danube (*dâ daz In mit vluzze in die Tuonouwe gât*, 1295, 4) and close to the Bavarian-Austrian boundary. Andree 70 K4; Baed. *SG* 382. It is mentioned in 1296, 1; 1298, 1; 1627, 4; 1629, 2 as the see of Bishop Pilgrîm (see Heusler 168-169; Schneider I, 90, 92; Bohnenberger *PBB* XLII [1917], 516-517; Tonnelat 313-315) and as a place of transit to *Rüedegers lant* (1299, 3; 1630, 3). It is said to be a *stat*, f. (1296, 1; 1298, 2), its townspeople are *burgære* (1298, 2), whose houses are referred to as *herberge* (1296, 2). Lodgings in the town are likewise *herberge* in 1297, 4; in 1629, 2 such accommodations are reported as insufficient for the transient Burgundians, as in Vienna (*Wiene*), who thus must cross the Inn (*wazzer* 1629, 3) to a plain or clear space (*velt* 1629, 3, perhaps the site of mod. Innstadt, ancient *Boiodurum*, Pichler II, 124), where pavillions (*hütten* 1629, 4) and tents (*gezelt* 1629, 4) are set up. The bishop's palace is *fürsten hof* (1296, 2) and referred to as *ze hove* in 1627, 3; a monastery (*klôster* 1295, 3) reminds one in name at least of the mod. Nonnberg, Klosterberg. See Dehio *SD* 376-79. *Lant* (1297, 1; 1628, 3) and *lantliute* (1627, 2) may refer to the region about Passau and its inhabitants or, perhaps, more generally to Bavaria.

The name looks back to Germano-Lat. *Batava* (*castra*) and the like, in the third century A.D. the headquarters of the Ninth Batavian Cohort, recruited originally at least from among the tribe of the *Batavi* on the Oude Rijn in Holland; *Batava castra* was near the Celtic settlement of *Boiodurum*. The name of the *Batavi* is elsewhere preserved in the Dutch districts of Over- and Neder-Betuwe and in the city of Batavia on the island of Java in the East Indies. The name is based on Gmc. *bat-* (see Feist under "batiza") and hence means "the able, competent people", with adaptation to the Gmc. element *ahwo* "watered land", Germ. *Au*(*e*) (Helbok 83-84), MHG *ouwe* (cp. also *Tuon-ouwe*); the first element is also reflected in OHG *baz* "better," MHG *bazze* f. "gain" "profit." See Schönfeld 45-46; Much in *Reallexikon* I, 178-179; Much *Germania* 270-271; Kauffmann II, 86-87 and 86, n. 11; J. W. Muller, "Batavia I" and "Batavia II", *Nomina Geographica Neerlandica* VIII (1932), 112-131 (esp. p. 114, n. 1) and 132-145. Egli 698. Forms in Oesterley 515; F-J I, 373-374 under "Batava."

PETSCHENAERE, st. m., a Petcheneg or Patzinak (Byz. Gk. Πατζινακῖται), member of a Turkish tribe, closely related to the Komans (Cumans), of sinister reputation who, entering Europe in the ninth century, were long settled on the lower Dneiper (Niederle I, 179) and *inter alia* were often at war with the Hungarians (Magyars). Droege, *ZfdA* LI (1909), 183; *Encyclop. of Islâm* III, 1036-1037. They are mentioned in 1340, 2 in a catalogue of Etzel's Slavic and Balkan allies (Hempel 15). At the time of *NL* their power had long since been broken, and they existed as scattered bands through the Balkans and, e.g., between the Danube and the Theiss; in the twelfth century they still held a part of Transylvania (Germ. *Siebenbürgen*). A century earlier they had been a menace to transient Crusaders en route to the East, and memory of this may be echoed in the epithet *die wilden* (1340, 2) (Tonnelat 325; Hempel 15).

From Slavic *Pechenég* comes not only MHG *Petschen-* (plus the suffix *-œre*; see under *Tronegœre*) but the modern historical names, Germ. *Petschenegen*, Fr. *Petschenègue*, English as above, etc. Such older Germ. forms as *Pecinacer*, *Picenacer* seem to show contact with Byz. Gk. Βισσενοί, med. Lat. *Bisseni* "Petchenegs"; for variants and bibliog. *Encycl. Islâm, cit. supra.*

PEYERLANT, see *Beyerlant.*

PLEDELINGEN (*C*-text only), Plattling on the Isar, Lower Bavaria, between Pföring (*Vergen*) and Passau (*Pazzouwe*). Andree 70 H4; Baed. *SG* 380-381. It is mentioned in 1297, 5 as a station on Kriemhilt's progress to *Etzeln burc* and as the point where Bishop Pilgrîm meets the queen and where she is entertained. It is added by the *C*-redactor perhaps to indicate the western limit of the diocese of Passau (Tonnelat 337; Weller *ZfdA* LXX [1933], 51). See also Dehio *SD* 385.

For forms see Oesterley 525; F-J I, 477. The early forms *Platlinga*, *Pladlingen*, *Plœdlingen* point to a derivation in *-lingen* (Helbok 15-19) from a personal name based on OHG *blât* in the sense of "glory" "fame" in such pers. names as *Blâd-art*, *Blâtbert*, OE *Blœdla*, and perhaps *Blœdelîn* of *NL*. (Schönfeld 51; WP II, 179). The *NL* form of the name shows umlaut; certain MHG forms and the mod. form reflect an unumlauted type, the umlaut having been prevented by early contraction and the resulting heavy consonant combination.

POELAN, st. m., a Pole, Germ. *Pole*, an inhabitant of Poland (Pol. *Polska*, Germ. *Polen*), mentioned in 1339, 2 in a catalogue of Etzel's Slavic and Balkan allies (Hempel 15). In the days of the *NL* poet Poland, lying directly N of Hungary (*Etzeln-lant*, *Ungerlant*) and between Germany and the Ukraine (*Kiewe*) was a much divided and politically unimportant kingdom; cp. Niederle I, 163. *Pulœrnaland* of *Ths.*

MHG *Pœlân* is adapted from Slav. *Poljane* "a Pole," from Slav. *pole,* n., "field" "prairie" "plain" and the derivative suffix *-jane* (*ZONF* II [1927], 149, 152), thus meaning "prairie-dweller" "plainsman." See *NED* under "*Pole*," sb. 4, also "*Poland*," "*Polack*" (Pol. *Polak*, m. "a Pole"): Hellquist under "Polen;" Metzenthin 84 under "Pulinaland;" Egli 733. From MHG *Pœlân* and the like, wrongly apprehended as a d. pl. *-en*, was formed Germ. *Polen* (on this use of the d. pl. see under *Burgonden*), whence secondarily *Pole*, m. "a Pole." Engl. "Pole" is adapted from German and "Poland" either from "Pole" and "land" (cp. Hellquist for occasional Swed. *Poland*; cp. Icel. *Pólland*) or by adaptation to *-land* of *-len* in Germ. *Polen* "Poland;" Germ. *Poland* is the "region drained by the Po R."

PRÜNHILDE BURC, f., "Prünhilt's fortified town," employed in 477, 2 as a synonym for *Isenstein*, *q.v.* For a similar mode of reference to a royal residence-town cp. *Etzelen burc.*

PRÜNHILDE LANT, n., "Prünhilt's land," synonymous with *Islant*, above, over which Prünhilt ruled as queen (*küneginne*, 326, 1; 330, 2) and more frequently used than *Islant*, is employed in 339, 3; 344, 2; 354, 3; 360, 4; 374, 3; 382, 3; 384, 2; 505, 4; 507, 4; it is referred to more briefly as *lant* in 416, 2; 478, 1; 512, 2. On this type of compound see *Etzelen lant*, above.

RIN, m., the Rhine R. (Germ. *Rhein*, m.), rising in Switzerland in two streams, the Hinter- and Vorder-Rhein, which unite at Reichenau; it then flows through Lake Constance (Germ. *Bodensee*), thence to Basel, and through Germany and Holland, where it forms a large and complex delta before entering the North Sea (*Sê*). The Rhine looms up prominently in *NL* where it is used in two ways:

I. with reference to the river itself as a traffic artery, as a boundary, and as a natural feature: 221, 1; 265, 1; 341, 1; 367, 1; 377, 3; 380, 2; 533, 4; 541, 3; 579, 1; 742, 3; 918, 3; 927, 1; 968, 4; 1002, 1; 1121, 4; 1134, 2; 1137, 3; 1187, 4; 1265, 3; 1384, 3; 1404, 2; 1515, 2; 1570, 3; 1742, 3. To these add instances of *Rîn* connected phrasally with Worms to define its site and listed under *Wormez*, below. The Rhine shore (*sant*) is mentioned in 376, 1; 396, 2; see also under *Wormez*. The Rhine (valley) is also mentioned in 380, 1-2 and 1187, 3-4, as the source of fine wine.

II. as a conspicuous landmark in the land of the Burgundians in close connection with the site of Worms *Rîn* is frequently used as a virtual equivalent for "Burgundian territory" or even for Worms itself as the chief town of the area: 56, 2; 58, 2; 85, 1; 176, 1(?); 195, 1; 205, 1; 219, 4; 233, 3; 235, 4; 238, 3; 240, 1; 325, 1(?); 328, 2; 368, 4; 375, 3; 421, 1; 509, 1; 519, 2; 549, 4; 607, 1; 688, 3; 711, 1; 718, 1; 731, 4; 735, 1; 758, 1; 760, 3; 763, 3; 778, 3; 833, 1; 851, 2; 859, 1; 889, 3; 1034, 1; 1073, 3; 1116, 3; 1118, 1; 1147, 2; 1155, 4; 1169, 3; 1171, 2; 1175, 1; 1177, 3; 1193, 1; 1289, 1; 1291, 3; 1309, 3; 1324, 2; 1371, 1; 1420, 3; 1422, 1; 1424, 4; 1429, 1; 1430, 1; 1431, 1; 1432, 3; 1445, 2;

1475, 2; 1490, 1; 1495, 3; 1507, 1; 1528, 2; 1582, 3; 1585, 4; 1808, 1; 1810, 4; 1898, 4; 1916, 2; 1968, 1; 1976, 4; 2078, 4; 2183, 2; 2269, 3.

The river is occasionally referred to as *vluot*: 378, 1; 390, 3; 403, 3; 409, 3; 504, 3; 531, 2; cp. the Danube (*Tuonouwe*, below) where such substitutions are much more frequent.

The name *Rîn* is pre-Germanic and looks back to OCelt. **Reinos*, whence Gmc. **Reinaz* (Germ. *Rhein*, Fr. *Rhin*, Engl. *Rhine*, etc.) vs. specifically Gaul. *Rênos*, whence *Rhenus* (with Graecized *Rh-* spelling) of Caesar and other Classical writers; see Guntert, *ZONF* VII (1931), 245; d'Arbois de Jubainville 211-212, 272, 326; Much *Germania* 12-13. This Celt. word is represented in Mid. Ir. *rian* "sea" "sea-current" and is to be associated with IE *er-ei-* "flow" (WP I, 140), thus meaning "the flowing one" "the stream." Forms in Holder II, 1130; F-J II, 592; Oesterley 563; and on the gender Karsten 58. For older, disgarded etymologies and other data see Egli 774-775. The modern spelling with *Rh-* is learned; cp. mod. *Griechen* vs. *Kriechen*, above.

RIUZEN, "(land of the) Russes," in a limited sense "Russia" (see below), Germ. *Russland*, is mentioned in 1339, 1 in a catalogue of Etzel's Slavic and Balkan allies (Hempel 15). In *NL Riuzen* would seem to be used to comprehend more than the area of the *lant ze Kiewe*, perhaps corresponding roughly to the not sharplly defined area of the Varangian-Russ sphere.

Riuzen is the d. pl. of *Riuze* "a Russ" "Russian;" OHG *Rûz(o)*, MHG *Rûz*, *Riuze*, the latter with *i*-umlaut surviving in the name of the Thuringian area of Reuss and in the common noun *Reuss*, m., "gelding" (Kluge-Götze *s.v.*). Mod. Germ. *Russe* is semi-learned, Neo-Lat. *Russo-*, Fr. *Russe*, etc.; MHG *Rûz* would have yielded a mod. **Rauss*. For similar pairing and development see under *Hiune*. On this use of the d. pl. see under *Burgonden*. The ethnic name *Riuzen*, etc. looks back to Finn. *Ruotsi* "Sweden" < an early form of Swed. *Roslagen*, formed on the base-word ON. *róðr*, m. "act of rowing", the coastal region of the province of Uppland (Hellquist under "Roslagen" for the history of the Swedish name). First applied to Scandinavians in the Baltic provinces and parts of what we now call Russia, the name was extended to define the area occupied by the same, including large numbers of Swedish Varangians (ON *Væringjar*, Germ. *Warägen*; Metzenthin 121-122) from Roslagen who settled in an area centering on Novgorod, Kiev (*Kiewe*), etc., and finally to all inhabitants, native and foreign, of this territory. See Cross 121-127 on the name Russ and its implications. From Finn. *Ruotsi* comes also OSlav. *Rus'* "a Russ" "Russia(n);" mod. Russian *Rossija* "Russia" looks back to Byz. Gk. Ρῶσια. See Metzenthin 88-89 under "Rúcía" (mod. Icel. *Rússland*); Hellquist under "2. ryss;" *NED* under "Russ," sb. and adj., and "Russia;" Karsten 78; Niederle I, 206, who would seem to question the generally accepted etymology of Finn. *Ruotsi*.

ROTEN, m., the Rhone R. (Germ. *die Rhone*, Fr. *le Rhône*), mentioned in 1244, 2 as one of the boundaries of Etzel's domains (see under *Mer*, above). Rising at the eastern end of the Swiss canton of Wallis (Fr. Valais), the Rhone flows into the Lake of Geneva (Germ. *Genfer See*; Fr. *Lac Léman*), thence S into France. Joined at Lyons by the Saône, it becomes one of the great rivers of Europe.

The name looks back to *Rhodanus*, later also *Rodanus*, of the ancient authors and is probably of Ligurian origin; see most recently P. Kretschmer, *Wiener prähistorische Zs.* XIX (1932), 279 vs. R. Thurneysen, *Indogermanische Forschungen*, XLII (1924), 144; also d'Arbois de Jubainville II, 124 ff.; Holder II, 1201-1222; Gröhler I, 12-13, 49. The MHG form shows a normal development within Germ. of the old name and is still preserved in *Rotten* (m.), local designation of the Swiss Rhone; for forms see Oesterley 564 under "Rhone;" F-J II, 606 under "Rhodanus;" Egli 776. OE *Roden* may be inferred from OE *Rodena mere*, referring no doubt to the lakes in the Rhone delta (Bouches-du-Rhône) (Eric Tengstrand, *A Contribution to the Study of Genitival Composition in Old English Place-Names* [Uppsala, 1940], pp. 261-262). *Rhone* of the mod. languages derives from mod. Fr. *Rhône*, OFr *Ro(s)ne* (Langlois 574 under "1. Rosne") with a graphic or southern Fr. *s* (Schwan-Behrens 81 §120, n.).

RÜEDEGERES LANT, n., the margraviate of Rüedeger of Pöchlarn (*Bechelâren*), vassal of Etzel (Heusler 89-91), is mentioned in 1299, 3 and 1630, 3; it begins E of the diocese of Passau (*Pazzouwe*; Tonnelat 106) at the Enns (1. *Ense*; Tonnelat 338). It is referred to briefly as *lant* in 1155, 1; 1279, 2; 1313, 3 (pl.); 1631, 2; 1636, 4; 1655, 4; 1659, 1; 2157, 3. It is thought of as rich in *bürge* (2139, 2; 2157, 3; 2164, 1). Its western frontier (*marke*), mentioned in 1631, 3; 1632, 4; 1634, 4, is the scene of the curious and interesting episode of Eckewart (Tonnelat 122-124, 254-257; Heusler 113-114).

SAHSE, wk. m., pl. *Sahsen*, "a Saxon," "Saxons," in *NL* the people of King Liudegêr, against whom and their northern allies the Danes (see under *Tenemarke*), the Burgundians and Sîvrit wage a successful war. They are mentioned in the heading to canto iv; 177, 4; 198, 1; 202, 4; 209, 1; 214, 3; 216, 4; 220, 2; 312, 2.

This ethnic name is no doubt based on Gmc. *sahsa-* "(short) sword," "(big) dagger;" see Schönfeld 199-200; Much in *Reallexikon* IV, 62 §11; Metzenthin 91-92; WP II, 475.

SAHSEN, "(the land of the) Saxons," centering on the middle Elbe, in *NL* thought of as ruled by King Liudegêr and used synonymously with *Sahsen-lant*; it is mentioned in 170, 1. A frontier (*marke*) is mentioned in 177, 1; castles (*bürge*) in 198, 4 and 885, 3; *velt* in 181, 1 and 186, 1 is the battle-field. In the day of the poet, i.e., after 1180, the name Saxony (Germ. *Sachsen*) was properly applied only to the districts around Lauenburg and Wittenberg; previously especially under Heinrich der Löwe, it had been a duchy of considerably greater extent. In the poem it is thought of as lying between Thuringia (*Düringen*, above) and Denmark (*Tenemarke*). On the route thither from Worms see Magoun, *MLR.* XXXIX (1944), 41, n. 3, col. 2, and under *Hessen*; the undefined route is mentioned in 197, 3 (*strâzen* and *si riten über lant*); see also K. Müllenhoff, 'Ueber Siegfrieds Sachsen- u. Dänenkrieg,' *Nordalbingische Studien*, I (Kiel, 1858), 191 ff., esp. pp. 195-197, for the plausible suggestion of faded reminiscences here of Charlemagne's earlier campaigns; see further Heusler 149, 167-168.

Formally *Sahsen* is d. pl. of *Sahse*; on this use of the d. pl. see under *Burgonden*. For forms see Oesterley 591-592; Egli 801-802; F-J II, 654-655; on the early history of the people see Much in *Reallexikon* IV, 60-62, and Kauffmann II, 160-170.

SAHSEN-LANT, n., "land of the Saxons," used synonymously with *Sahsen*, above. It is mentioned in 140, 2; 176, 2; 180, 3; 194, 4; 237, 3, and is referred to more briefly as *lant* in 163, 1; 164, 2; 175, 3; 176, 3; 189, 1; 312, 3; 885, 3. On the formation of this compound see under *Burgonden-lant*, above.

(*ZE*) *SANTEN*, Xanten (Rhineland), a little W of the Rhine and *ca.* 30 km. upstream from the Dutch border, is mentioned in 20, 4 and 708, 4 as the name of the *burc* or royal residence of King Sigemunt and of Sîvrit. Andree 63 B 2; Baed. *Rh.* 22-23. It is thought of as situated in *Niderlant* (cp. 713, 4), *Sigemundes lant* (720, 3). The *palas* is mentioned in 34, 3 and 35, 3, with Sigemunt's *sal* (34, 3; 710, 1), courtyard or *hof* (741, 2; 742, 2; 744, 4), and a window (*venster*, 741, 1). Quarters, presumably mostly out in the town, for putting up visitors, are implied in 744, 1 by the vb. *herbergen*. The *münster*, an old foundation dedicated to St. Victor (Dehio-Gall *Rh.* 16-24; see Lunzer, *ZfdA* LXIX [1932], 277 ff. for an unconvincing attempt to establish a connection between this 'Victor' and the name Sîvrit), is mentioned in 32, 1. In the poet's day Xanten was in the Duchy of Brabant; it had been the site of the Roman colony Castra vetera, established by Drusus.

The name (*ze*) *Santen* looks back to Lat. *ad Sanctos*, with particular reference to the local cult of the relics of certain members of the Theban Legion, so prominently associated with St. Maurice d'Agaune (Switzerland), and thus recalls, e.g., numerous Fr. place-names (Sains, Saints) of similar origin (see Longnon 388 §1522) and has led to the suggestion that *Sainz* of the *Chanson de Roland* 1428 may refer to Xanten. An old literary designation *Troia minor* accounts for attempts at an unlikely identification of *Tronege* (*q.v.*) with Xanten (see Lichtenberger 78-79, 108-109), For forms see Oesterley 789-790; F-J II, 682. The phrase *ze Santen* (20, 4), standing for *Santen* (708, 4), is matched in OE where *æt* "at" is similarly used and where "at *X*" often becomes, or is equivalent to, the name of "*X*"; for determinative phrases with *ze* and a place-name, see under *Wormez*. The mod. spelling with *X*- vs. *S*- is a pseudo-Graecism.

(*EIN*) *SCHOENER BRUNNE*, wk. m., "fair spring, source," a nature name of uncertain identification, which despite its literal meaning is in *NL* obviously conceived as a backwater or dead arm of the Danube (*Tuonouwe*) and as extending not far off the main stream. A camp (*herberge*) is thought of as nearby (1544, 2; 1549, 4). It is mentioned in 1533, 3 as the site of Hagen's encounter (stz. 1533-1548; cp. 1589) with the prophetic women (*wîsiu wîp*) or undines (*merewîp*), of which one is named Hadeburc (1535, 1); on this famous and dramatic scene see *Tonnelat* 249-251; A. H. Krappe, "Hagen et les ondines," *Neophilologus*, XIV (1929), 42-46; Joh. Bolte-Georg Polívka, *Anmerkungen zu den Kinder- u. Hausmärchen*, III, 416, ("Donauweiber"); Heusler 80-81, 126.

There are many Schönbrunn's, also Schönborn's, in Germany (see Oesterley 613, col. 1), but none, including Schönbrunn near Landshut in Lower Bavaria, can belong here; on names with *brunne* see under (*ein*) *Kalter Brunne*. Discussion, which can scarcely be expected to lead to practical results, has centered on whether the *Schœner Brunne* can be actually identified and whether it is near or nearer Gross-Mehring (*Mœringen*) or Pföring (*Vergen*). Whatever the original tradition may have been in the older *Nôt* and before, it may be doubted that the poet of *NL* had anything definite in mind. In *Ths.* II, 285 ll. 22-23, the corresponding body of water is called *Mœre* (*Nu kemr Hogne til eins vatz er heitir Mœre*) with a more than suspicious resemblance to *Mœringen* of *NL*, despite, perhaps, a formal adaptation to the Norwegian district of (North and South) Möre (Hempel 6). A situation near Gross-Mehring is favored by Bohnenberger *PBB* XLII (1917), 518-520; Wesle *PBB* XLVI (1922), 242; and Weller *ZfdA* LXX (1933), 50, who would reject Weber *ZfdA* LXIII (1926), 141-142, who urges a beautiful pool on the Kelsbach, which enters the Danube at Pföring, at a point on the Kelsbach 2, 5 km. upstream, by the village of Ettling (older Öttling) known to Heusler's old "bajuwarischer Dichter." The name Kelsbach is Celtic in origin and the undines would, according to Weber, be residual legatees of old Celtic divinities. *Non liquet.*

SE, m. (d. sg. *sêwe*), "sea" "ocean," applied (I) to the North Sea (Germ. *Nordsee*), especially at the mouth of the Rhine (so in 329, 1; 339, 2; 367, 3; 381, 3), and (II) to the North Sea and North Atlantic between Germany and Iceland (326, 1; 341, 3), Iceland and Norway(?) (508, 3), and Norway (Alberîch's land) and Germany (1121, 3). Specific MHG designations of these waters were *Westersee* (cp. OE *Westsǽ*) and *Nordsee*; see Oesterley under *Nordsee* (p. 487, col. 2), also *Ostsee* (p. 508, col. 1); Egli 653; with the present unqualified use of *sê*, cp. OE *sǽ* used quite specifically for the English Channel; see Magoun, *Speculum*, XVI (1941), 506.

SIGEMUNDES LANT, n., "the domain of Sigemunt," thought of as centering on Xanten (*Santen*, *q.v.*), serves to vary *Nibelunge-lant* II, *Niderlanden*, *Niderlant*, and *Sîvrides lant* and is used in 38, 4; 66, 2; 260, 4; 707, 2; 720, 3; 1090, 3; it is referred to more briefly as *lant* in 39, 2; 39, 4; 67, 3; 107, 1; 706, 1; 714, 1; 1073, 2; 1073, 4; 1075, 3; 1094, 3.

SIVRIDES LANT, n., "the domain of Sîvrit," thought of as centering on Xanten (*Santen*, *q.v.*), serves to vary *Nibelunge-lant* II, *Niderlanden*, *Niderlant*, and *Sigemundes lant*, and is used in 725, 3; 733, 3; 737, 2; 765, 4; it is referred to more briefly as *lant* in 684, 3; 690, 3; 738, 2; 762, 3.

SPANE, *SPANJE*, Spain, Germ. *Spanien*, mentioned in 1756, 3; 1797, 1; 2344, 3 (*Spânje*) as the home land of Walther (OE *Waldere*, med. Lat. *Walt-harius*) of Gmc. heroic legend, hence perhaps here rather specifically Visigothic Spain (Kauffmann II, 30-32), and thus serving only a decorative function geographically in *NL*; cp. *Alzeye*, *et al.* This localization of Walther is normal in MHG poetry and is thus to be compared with his home in Aquitaine (*Aquitania*), i.e. Visigothic kingdom in SW France, of the Germano-Lat. *Waltarii poësis*, *passim* (see Heusler in *Reallexikon* IV, 477 §5, under "Walther u. Hildegund"). Med. Germ. epic also places his residence at Langres (dep. Haute-Marne, France); while in the Polono-Lat. version of his story Walter "the Strong" is count of Tyniec near Cracow (Poland); see Schneider I, 341-342; Smyser-Magoun 146-150.

The name Spain looks back ultimately to Lat. *Hispania*, late Lat. *Spania* (Gk. *Σπανία*), "the Hispanic, Iberian Peninsula" (PW XVI [1913], 1965), possibly of Basque origin (Sieglin *ZONF* X [1934], 253-256). The MHG forms reflect both the OFr. type *Espan* (Langlois 202 under "2. Espanois") and (*E*)*spagne* (Langlois 201 under "Espaigne"); ON and Icel. *Spánn* (Metzenthin 100-101); for ME forms see *NED* under "Spain;" on the later Germ. formation in *-ien* see under *Burgonden*.

SPEHTSHART (*DER*), m., the Spessart (Germ. *der Spessart*), a forested mountain-range extending over part of Hesse and Lower Franconia, N of the Main R. (*Meun*, above) and some considerable distance (*ca.* 80 km.) NE of Worms, is mentioned by Hagen to Sîvrit in 967, 3 as the locality where he pretends to have thought that the fatal hunt was to have taken place vs. the *Waskenwalt*. Andree 69 A 1-2, just S of the Odenwald (*Otenwalt*, *q.v.*).

Spehtshart is compounded of *speht*, st. m. "speight (*obs.*)" "green woodpecker" (*gecinus viridis*) + *hart* "mountain forest" (Helbok 85), hence means "the mountain forest (conspicuously) frequented by woodpeckers." Egli 870. See further Kluge-Götze under "Specht" and "Hart," and for forms Oesterley 645, F-J II, 833.

SPIRE, Speyer, at the confluence of the Speyerbach and the Rhine, Bavarian Palatinate. Andree 68 F2; Baed. *Rh.* 394 ff. The town is mentioned in 1508, 2 as the see of a certain "old bishop" (*ein alter bischof*), hence serving only a decorative function in the poem; the latter is not named, though it has been suggested that the poet had a real person in mind (Heusler 170), perhaps Otto von Henneberg, 1190-1200 (Hempel 19). The cathedral of SS Mary and Stephen was built *ca.* 1060, rebuilt *ca.* 1080-1110, and a second reconstruction undertaken *ca.* 1160 (Dehio *SWD* 372-373). In the *Waltharius* l. 1010 (Smyser-Magoun 135) Speyer (*Spira*) is described as a flourishing city (*pollens urbs*), home of the hero Tanastus (see Althof II, 279-280), while *ca.* 1154 the town and its cathedral are mentioned by Abbot Nikulás Bergsson of the Benedictine foundation at Munkaþverá in northern Iceland (Magoun, *Mediaeval Studies*, VI [1944], 330 §32).

The oldest recorded name of this locality is Celto-Roman *Noviomagus* "new settlement" (Holder II, 792 §14; Longnon 104 §419), replaced in the fourth century by *Colônia*, *Civitas Nemetum* (Holder II, 709-709), based on *Nemetes*, *Nemetae*, Celt. name of a Gmc. tribe, later still replaced by *Spîraha*, *Spîra*, old name of the Speyerbach, whence the med. and mod. town-name. Holder II, 1626-1627; for a Gmc. etymology, "to spue" < **spiw-*, see F-J II, 839; for forms see additionally Oesterley 644-645, and for early historical references Egli 869; Kauffmann I, 242; II, 59, n. 8; 152, n. 7; 306, n. 2.

STRAZE, st. wk. f. "highway" "street" used (I) for the route leading from Worms through Hesse to the land of the Saxons in 197, 3 (see further under *Sahsen*, above); (II) in 243, 3 for a street in Worms; and most frequently (III) to designate the whole or part of the route between Worms and *Etzeln burc*, the classic "Nibelung Route" (see p. 86, n. 9, above): 1174, 4; 1267, 4; 1279, 3; 1302, 3; 1328, 4; 1329, 2; 1336, 2; 1496, 1; 1591, 4; 1594, 3; 1601, 1; 1602, 4; 1639, 1; 1708, 3.

See also under *Wege*, below.

SWABEN, "(land of the) Swabians", "Swabia" (Germ. *Schwaben*), mentioned in 1493, 3 as the first stage of the return journey of Wärbel and Swemmelîn from Worms to *Etzeln burc*. Swabia was in the days of the *NL* poet, also before and after, a duchy bounded by the Rhine, the Lake of Constance (Germ. *Bodensee*), the river Lech, and the duchy of Franconia (*Ostervranken*). *Swâben*, correctly thought of a lying SSE of *Ostervranken*, is formally the d. pl. of *Swâbe*, wk. m. "a Swabian" (also MHG *Swâp, Swâbes*, st. m.); on this use of the d. pl. see under *Burgonden*.

This ethnic name appears earliest in Caesar as *Suêvi* and in other ancient writers as *Suêbi*, *Suâbi*, *Suâvi* (Schönfeld 212-215; Kauffmann I, 238, n. 4), and is usually applied to groups of tribes very variously distributed in the Germanic area (Much *Germania* 330-332); in later sources, on the contrary, it is used only for specific groups, scattered, to be sure, between the Eider in Schleswig-Holstein and Spain; see Much in *Reallexikon* IV, 297 §2. under "Sueben," and Kauffmann II, 80-85, for the earlier history of the groups bearing this name. On the Danubian *Suêbi* here in question, whose name in later times replaced that of the Alamanni see Much in *Reallexikon* I, 57 §2, under "Alemannen;" Karsten 245-246; Kauffmann II, 91. The etymology of the Swabian name is obscure; see Karsten 131 and Much *Germania* 29 for association with the pronominal stem *sve-*, *svo-* (so WP II, 456). For forms see Oesterley 617; F-J II, 951; also Egli 830 and Metzenthin 103 under "*Sváfa*", *Sváfaland*" of *Ths.*; OE. *Swǣfe* (Mezger 32-33). Note also the Fr. form *Souabe*, used dialectically for Germans in general vs. standard Fr. *Allemand*, also the small English towns of Swaffham (Bulbeck and Prior) in Cambridgeshire, perhaps reflecting the participation of Swabian elements (Eider-Swabians?) in the fifth-century German conquest of England.

SWALEVELT (de Boor) see under *Swanevelt* (MS., Bartsch).

SWANEVELT, n., mentioned in 1525, 1, by implication lies between Eastern Franconia (*Ostervranken* 1525, 1) and the Danube (*Tuonouwe* 1525, 4) at a point (*ûf den sant* 1526, 3) twelve days from Worms and apparently not far from the *Schœner Brunne* of 1533, 3, and by the border of *Gel(p)frâtes lant* (stz. 1531 ff.) Thus, despite the form in *NL*, *Swanevelt* cannot well be identified with Schwanfeld (older *Suanefelt*, *-felden* of Oesterley 619, F-J II, 963), just W of the Main (*Meun*) and about midway between Würzburg and Schweinfurt, with which it is formally identical; it must stand for *Schwalevelt* (so emended by de Boor) or the like (Oesterley 618; F-J II, 959-60), an old district (*Gau*, *pagus*) SE of Franconia and more or less centering on the Schwalbe or Schwalb-Bach, tributary of the Wörnitz (Wernitz), which, in turn, enters the Danube at Donauwerth (Andree 69 D4); the old district was thought of as extending E to the Altmühl (see Kauffmann II, 319, n. 2; Tonnelat 336; Weber *ZfdA* LXIII [1926], 132 and n.).

The etymology of *Swanevelt* is clear and means "open country frequented by swans," with a combining form here based on MHG *swan*, st. m. (vs. *swane*, wk. m.). The bird-name enters into many German place-names as *Schwan-*, *Schwane-*, and *Schwanen-* (on this survival of the wk. decl. see Curme 88 §3*b*). The etymology of the true name, *Swalevelt*, is difficult and uncertain. The alternate forms *Swal-*, *Swalb-* point to Gmc. *swalwon-* "swallow" (bird-name), OHG *swal(a)wa*, MHG *swalwe*, dial. *swale* (Paul-Gierach 87 §109), a root not appearing to have wider connections (WP II, 535), and hence difficult, if not impossible, to associate, as does Eilert Ekwall, *English River-Names* (Oxford, 1928), 384-385, with the IE root *suel-* (WP II, 531) which shows no use of a *u(w)*-formans, represented in the vb. "to swell," Germ. "Schwall," and the like, or with IE *salo-* (WP II, 454) in Lat. *salum* "sea." The same problem arises in connection with the Yorkshire *Swale* which Ekwall discusses.

TENE, wk. m., pl. *Tenen*, Danes, auxilliaries of Etzel, mentioned in 2074, 1 together with the Thuringians (*Düringe*) as witnesses of the death of Irinc. On this ethnic name see *Tenemarke*.

TENELANT, n., Denmark, used to vary *Tenemarken*, is mentioned in 2058, 1; 2064, 2; 2065, 1 ;2068, 1. On the ethnic name see *Tenemarke*.

TENELENDER, m., a Dane, one from *Tenelant*, applied in 2045, 4 to Irinc, Danish margrave living in exile at Etzel's court. On the *-er-* suffix, affixed to names of countries, cities, etc. to indicate residence in, or origin from, see Kluge *Wtbldg.* 29-30 §41; Curme 407 §5*e*, also under *Tronegœre*.

TENEMARKE, st. f., Denmark, Germ. *Dänemark*. In *NL* Denmark appears in two quite different connections:

I. As the kingdom of Liudegast, ally of his brother Liudegêr, king of the adjacent *Sahsen*, in an unsuccessful war against the Burgundians, it is mentioned in 140, 3; 169, 1; 192, 1; 202, 1; 220, 1; 311, 1.

II. Later *Tenemarke* (also *Tene*, *Tenelant*, *Tenemarken*) is mentioned as the home-land of Duke Hâwart, of his liegeman Margrave Irinc, and their retainers, living in exile at Etzel's court and in close association with the Thuringians (*Düringe*): 2028, 1; 2069, 4.

Like ON *Danmörk*, OE *Denamearc*, the MHG name means "the march of the *Tene* (Danes)." The etymology of the ethnic name is difficult and disputed. Two main proposals have been made: (1) a derivation from a cognate of OE *denu*, f., "valley" "dean" (elsewhere only represented in Low German dialects) and hence meaning "lowlanders" "valley dwellers" (cp. OE *densǽte*, m. pl. "*vallicolae*"; *deneland*, n. "valley"); so Much in *Reallexikon* I, 388 under "Dänen" §3; *idem* more cautiously in *Deutsche Stammeskunde* (Sammlung Göschen No. 126, 3d ed.), p. 129; Hellquist under "Danmark;" Kluge-Götze under "*Tenne*;" Schönfeld under *Dani*; Karsten 225. (2) A derivation from a cognate of Germ. *Tann*, MLG *dan* "forest;" so Ferd. Holthausen, *Ae. etymol. Wtb.* under *Dene*; R. Zachrisson *Acta Philologica Scand.* I (1926), 284-292. The MHG spelling with *T-* corresponds normally to Gmc. *D-* of the non-High Germ. form of this name; mod. Germ *D-* (*Dän-*), on the contrary, shows Low German influence; see Paul-Gierach 33 §36, 4. On MHG *marke*, Germ. *Mark* "boundary" "frontier" see Kluge-Götze *s.v.* and Metzenthin under *Danmörk*.

TENEMARKEN, Denmark, synonymous with *Tenemarke*, is mentioned in 1345, 1; 1877, 3; 2037, 1. Formally *Tenemarken* is the d. pl. of *Tenemarke*; on this use of the d. pl. by analogy with ethnic names see under *Burgonden*, and cp. *Niderlanden*.

TIUSCH, adj. German (Germ. *deutsch*, Icel. *þýskur*, and cp. Engl. Dutch), used in 1354, 4 apparently to describe inclusively the German (Teutonic?) groups accompanying Kriemhilt on the occasion of her meeting with Etzel at Tulln (*Tulne*) (1341, 2; 1361, 2). Are perhaps also included Goths under Dietrich and Danes under Hâwart?

MHG *tiusch*, adj., formed with the *isch*-suffix (see under *arâbîsch*) and with *i*-umlaut, is based on OHG *thiot*, *diot*, *thiota*, *diota*, etc., MHG *diet* "people", yielding OHG *diutisk*, MHG *tiut(e)sch*, *tiusch*, lasting on late in German as *teutsch*. The root belongs to the widespread IE **teutá*, f. "people" (Holder II, 1804-1805; WP I, 712); on this ethnic adj. see Schönfeld 224 under "Teutoni"; Much in *Reallexikon* IV, 314-316, under "Teutonen"; Metzenthin 126-127 under "þýðerska;" also *NED* under "Dutch," Kluge-Götze under "deutsch;" Hellquist under "tysk", with general discussion of the word. The historically wrong *teutsch* for *deutsch* which persisted in German until the nineteenth century may be due to pseudo-learned influence (cp. early Germano-Lat. *theotiscus* and Paul-Gierach 33 §36, 4, and note *idem*, 39 §40, n. 4) or, possibly, to a progressive assimilation of the final *-t* with *tiut-*.

TREISEM, f., the Traisen R., right bank tributary of the Danube (*Tuonouwe*) in Lower Austria. Andree 77 D1. Mentioned in 1331, 1 and 1332, 1 as the river on which *Zeizenmûre* (*q.v.*) is said to stand. Forms in Oesterley 691 under "1. Traisen;" F-J II, 1000-1001 §2. The name also appears in the town-name Traisen (Oesterley 691 under "2. Traisen") and in some compound names in

Trais- (cp. Steinhauser 39), and would seem to look back to a Celt. river-name **Tragisama* (see Holder II, 1902, under **Tragisamum*), based on the IE root *tragh-* (WP I, 752-753), appearing in Gaul. *vertragus* "fleet-footed dog"; the river-name would thus mean "the swift flower." So Steinhauser 6, Weinberg 72 with the historically less likely alternate suggestion of derivation from OHG *trâgi*, Germ. *träge* "sluggish".

TREISENMURE (*C*-text only), f., Traismauer, a village near the confluence of the Traisen (*Treisem*) and the Danube. Andree 77 D1; Baed. *AH* 136. This name does not occur in the *B*-text of *NL*, but where in Kriemhilt's itinerary one would expect it, i.e., between Mautern (*Mûtâren*, 1329, 3) and Tulln (*Tulne* 1341, 2) one finds *Zcizenmûre* (1332, 3; 1336, 1), *q.v.* Many scholars and editors (e.g., Bartsch vs. de Boor) favor an emendation of *Zeizenmûre* to *Treisenmûre* as made by the *C*-redactor and assumed by Tonnelat 339, though the *B*-text author was not infallible geographically as is testified to by his *Waskenwalt* and *Swanevelt*. Traismauer means "the walled place on or near the Traisen;" see Helbok 38 for "Mauer" in place-names.

TRONEGAERE, m., inhabitant of *Tronege* (Germ. *Tronjer*) used (I) contrary to ancient tradition (Heusler 177, 288) in sg. for Hagen (1560, 4; 1573, 4; 2375, 4), (II) in pl. for Hagen's retainers (234, 1; 699, 2, and see Tonnelat 66). Cp. *Tronege* II and III.

Tronegœre is formed from *Tronege*, with the OHG suffix *-âri*, itself a fusion of Gmc. *-warja-* and Lat. *-árius*, to indicate the inhabitants of a place or region; see Kluge *Wtbldg.* 30 §41; Kluge *Stbldg.* 19 §33a. MHG *-œre* is based, as suggested, on OHG *-âri*, while MHG *-er* (in *Berner*, of Bartsch) looks back to an old middle Germ. **-ari* > *-eri* > *-er* (Paul-Gierach 51 §58 n., also 39 §40, n. 3 on unumlauted MHG derivatives); in the course of time both endings have merged in Germ. *-er*.

TRONEGE, Tronje of modern scholarly parlance and possibly somehow to be equated with Kirchheim in Lower Alsace (Dehio *SWD* 178) is mentioned: (I) as Hagen's birthplace and inferentially of his younger brother Dancwart (1753, 2); (II) like *Tronegœre* to specify Hagen's retainers (1616, 3; 1619, 4); and (III) by all odds most frequently as a stock epithet of Hagen himself: 9, 1; 99, 3; 119, 2; 151, 1; 172, 4; 406, 3; 424, 1; 438, 2; 519, 1; 529, 2; 598, 1; 698, 1; 796, 1; 863, 4; 882, 2; 891, 3; 903, 1; 967, 1; 969, 1; 972, 2; 1001, 1; 1107, 1; 1140, 1; 1178, 1; 1183, 1; 1396, 4; 1419, 2; 1420, 2; 1431, 4; 1464, 1; 1475, 1; 1513, 1; 1583, 1; 1599, 1; 1604, 1; 1607, 3; 1618, 2; 1631, 4; 1720, 1; 1732, 4; 1737, 4; 1751, 2; 1757, 2; 1758, 2; 1768, 1; 1771, 2; 1811, 1; 1964, 2; 1980, 1; 2025, 1; 2054, 3; 2222, 1; 2251, 2; 2256, 1; 2289, 1; 2306, 2; 2326, 1; 2352, 2; 2369, 4.

In thus puzzling name legend and geography seem to be almost inextricably tangled. At some, probably relatively early stage in the legend, Hagen, viewed as a Frank, was described as of Trojan descent in conformity with the pseudo-learned tradition of the Trojan origin of the Franks (Althof 22-23); this one finds, for example, in *Waltharii poësis* 28, where Hagano is described as "*veniens de germine Troiae*," and in *Ths.* II, 322, 329, 372, where he is "*af Troia* (var. *Troio*);" in both these instances the ancient city of the Troad is certainly intended. It is, however, striking that Hagen alone of the all Nibelung heroes should be described thus. Cp. Lichtenberger 79, 128-129; Heusler 33-34.

Independent of the foregoing, though quite possibly connected with the general legend of the Trojan origin of the Franks, is the fact that two Rhenish towns are recorded with the by-name or alternate and ostensibly original name of *Troia*, namely, Xanten (*Santen*) (Althof 23, 25) and Kirchheim i. El. (Althof 25-26; see Oesterley 344 under "Kirchheim i. El."); such by-names are learned. In the case of Kirchheim *Troia* may conceivably have arisen from a name **Tronia* (cp. Swed. *Trönia*, Hempel 21, 265), in turn based on the name of St. Petronella, early associated with the town (Althof 26, top).

If *Tronege* is not merely an error of sorts for *Troia* "Troy" (Heusler 34), it is probably to be viewed as referring to Kirchheim and in any event as an attempt on the part of the poet to furnish Hagen with a birthplace (I, above) in the general vicinity of Worms (Schneider I, 89; Hempel 22, with other less promising localizations). Judging from stz. 1475, the district of *Tronege* was not viewed as a part of *Guntheres lant* (1475, 4) and in 1806, 4 is referred to as Hagen's *lant*. However one may interpret this name, it must fundamentally be viewed as a fiction of some sort, since Hagen cannot be regarded as an historical figure (Tonnelat 363-364).

TRUNE, f., the Traun R., right-bank tributary of the Danube (*Tuonouwe*) between Linz "ob der Enns" (almost oddly not mentioned in *NL*) and the Enns (1. *Ense*), Upper Austria. Andree 77 C1; Baed. *AH* 127 (bottom). It is mentioned in 1304, 1 as being crossed before reaching the town of Enns (2. *Ense*). Forms in Oesterley 692 under "1. Traun;" F-J I, 752 §1; II, 1523; Schiffmann I, 216; cp. Holder II, 1331, under "Druna", §3.

Trûne is commonly and probably correctly thought to be Celtic and from a Celt. root *dru-*, IE *dreu-* etc. "flow" "run (of water)" (WP I, 795) and thus, like the Gaul. *Druentia*, means "the flower" "the stream"; so Kaspar Zeuss, *Die Deutschen u. die Nachbarstämme*, p. 13; Schiffmann *LE* 40; Schwarz *OöO* 27-28: Schwarz *ZONF* I (1926), 193, on the lengthening of the root-vowel. Connection with Go. *drunjus*, m. "sound" "noise" retained by Weinberg 85 is unlikely.

TULNE, Tulln, on the Tullnbach at its confluence with the Danube, Lower Austria. Andree 77 E1; Baed. *AH* 136. It is mentioned in 1341, 2 and 1361, 2 as a station reached by Kriemhilt between Zeiselmauer (*Zeizenmûre* 1336, 1) and Vienna (*Wiene* 1361, 2). It is a *stat*, f. (1341, 1); pavillions (*hütten* 1356, 2; 1359, 3) and tents (*gezelt* 1356, 1) are set up in the open country (*velt* 1356, 2) outside the town, the Tullner Feld, to serve as quarters (*herberge* 1359, 4) for the visitors. In 1355, 2 *lant* may refer to the more or less immediately surrounding country or more generally to *Etzeln-lant*. The Celto- Roman name of this old settlement was *Comagena*, etc. (Pichler II, 135; Steinhauser 7-8). Forms in Oesterley 699; F-J I, 761.

The town-name is quite likely from the stream-name (Tullnbach), with early forms *Tullina*, *Tullona* (Steinhauser 4), Gk. Τοῦλλον (Strabo), looking back to a base *tull-* of unknown origin and meaning and a suffix *-ina -ona* of various possible origins. It does not seem possible to associate this stem *tull-*, as do Steinhauser 4 and Weinberg 73, with IE *tu-l-* (WP I, 709) which appears in German as, e.g., *Dolle* "bushy tree-crown" and in the well-known personal name "*Dollfuss*" "club-foot", though one might think with Weinberg of some connection with OHG *tulli*, MHG *tülle* "tube" with reference to the course of the river (see Kluge-Götze under "Tülle" and *NL* 956, 3 with the meaning "ferrules").

TUONOUWE, f., The Danube R. (Germ. *Donau*, Hungar. *Duna*, Serb. *Dunav*, m.), rising in the Black Forest (Baden), receives its name at Donaueschingen at the confluence of three streams. It flows NE past Ulm to Ratisbon (Germ. *Regensburg*) where it turns SE and then E, entering Austria at Passau (*Pazzouwe*); it maintains this easterly course to a little beyond Esztergom (*Gran*) in Hungary, where it turns due S to reach Budapest. In *NL* its valley, and at times the stream itself, is a veritable traffic artery, serving persons travelling between Worms (*Wormez*) and *Etzeln burc* (*Gran*?). It is mentioned in 1288, 3; 1291, 1; 1295, 4; 1320, 3; 1329, 3; 1341, 1; 1525, 4; 1712, 4. It is referred to as *wazzer* in 1377, 2; 1527, 1; 1528, 3; 1531, 1; 1533, 2; 1543, 4; 1544, 2; 1549, 3; 1629, 3; as *vluot* in 1531, 2; 1536, 1; 1548, 1; 1550, 1; 1551, 4; 1571, 1; 1574, 1; 1581, 3. The river-side is referred to as *sant* "sandy shore" "beach" in 1526, 3; 1545, 3; 1549, 3; 1555, 1; 1558, 4; 1564, 3; 1572, 3; 1586, 1; 1611, 2; 1712, 3; as *stat*, n., "shore" in 1288, 3 (*Tuonouwe stat*); 1383, 1; 1565, 3.

Of its many tributaries four, all on the right bank, are mentioned in *NL*: in down-stream order—in Bavaria, the Inn (*In*); in Austria, the Traun (*Trûne*), the Enns (1. *Ense*), and the Traisen (*Treisem*); here mention may be made of the *Schœner Brunne* of uncertain location but possibly near Gross-Mehring (*Mœringen*). Fifteen towns along the river are mentioned: in down-stream order—in Bavaria, Pföring (*Vergen*), Gross-Mehring (*Mœringen*), Passau (*Pazzouwe*); in Austria, Eferding (*Everdingen*), Enns (2. *Ense*), Pöchlarn (*Bechelâren*), Melk (*Medelicke*), Mautern (*Mûtâren*), Zeiselmauer (*Zeizenmûre*, *Treisenmûre* of *C*), Tulln (*Tulne*), Vienna (*Wiene*), Hainburg (*Heimburc*); in Hungary, Wieselburg (Hungar. Moson) (*Misenburc*), Gran (Hungar. Esztergom) (*Gran*), and *Etzeln burc* (Gran? Ofen?). On the dramatic episode of the ferryman and the Danube crossing ("Donauüberfahrt, -gang") see under *Mœringen*, above. Forms in Holder I, 1235; Oesterley 130-131; Egli 257; F-J I, 686-687.

The history of the Danube-name is difficult and disputed. Long surely wrongly derived from a supposed continental cognate of OIr. *dána*, *dánatu*, "daring" adj., sb. of unsuitable meaning (Holder I, 1225-1238), most recently urged anew by Thurneysen in Kuhn's *Zs. f. vergl. Sprachwissenschaft*, LIX (1932), 13-14, the consensus of present opinion is that the name looks back to an IE stem *danu-* "stream" "river" "dripping water" and the like (WP I, 763, under the root *da-*), represented in Sanskrit *danu* "dripping liquid" "dew", Avestan (OPers.) *danu-*, Ossetic *don* "river", a connection seen long since by Max Müller, *Revue celtique*, I (1871), 135-136. The question then arises: is this base *danu-*, *danav-*, exclusively Indo-Iranian or did it also exist in Celtic (see Much in *Reallexikon* I, 389, under "Danuvius"). In *ZfslPh* I (1924), 1-25, with supplementary notes in II, 418, Max Förster argues for an immediate Celtic source and seeks support in the British rivers *Don* (see Eilert Ekwall, *English River-Names* [Oxford, 1928], pp. 126-128). More recently P. Kretschmer (*Glotta*, XXIV [1936], 1-55, esp. 1-11) has argued against a Celtic origin or transmission (urging that the English Don names were transpanted from the Continent) and for a Scythian origin or, at least, a Scythian transmission of the Indo-Iranian stem from an oblique case *danav-*. No definite opinion seems attainable. The Romans may have distorted the name, first levelling to a stem *Danuv-*, whence an adj. *Danuvius*, perhaps under the influence of *fluvius* (bad spelling *Danubius* has influenced the mod. form in many languages). In Gmc. the development would have beeen to *Dón-*, with further adaptation of the second element in OHG to *-ouwa* (answering to OE *éa*, ON *-ey*; see under *Pazzouwe*), yielding OHG *Tuonouwa*, MHG *Tuonouwe*. ON (*Ths.*) and Icel. *Dúná*, transmitted through LG, shows the natural adaptation of the second element from *-ey* to *á* "river"; OE (Alfred's Orosius) *Dónua* seems (so Förster) to show semi-learned adaptation from what one may reasonably assume to have been normal OE *Dón-Ea* or *Dónéa*. Mod. Germ. *Donau* for an expected *Tunau* is irregular, with *D-* for MHG *T-*, perhaps due to learned (Lat. *Danuvius*) influence, as *Rh* in *Rhein* (vs. MHG *Rîn*), and *o* for the expected *u* reflecting Swabian (*ZONF* II, 234-235) or Middle Bavarian (*ZONF* III, 51) chancellery language. Mod. Engl. *Danube* is learned. To the popular Romanic forms listed by Förster, *art. cit.*, p. 25, add Dante's *Danoia* (*Inf.* xxxii, 26) vs. mod. Ital. *Danubio*.

UNGERLANT, n., "Hungarian land, domains" "Hungary," is mentioned in 1373, 1 as the home of Blœdelîn, Etzel's brother, and is used more or less synonymously with *Etzeln lant*, *Hiunen lant*, and *Ungern*, *q.v.* for the history and etymology of the ethnic name. In this determinative compound the element *Unger-* is, like *Beyer-* in *Beyerlant*, uninflected vs. *Burgonden-* in *Burgondenlant, q.v.*; cp. mod. Germ. *Ungarmädchen*, *Ungarwein*, etc. To this correspond OE *Ungerland* (Mezger 35), ON *Ungaraland*; mod. Icel. *Ungverjaland* shows adaptation to other names in *-verjar*, e.g., *Rómverjar*.

UNGERN, lit. Hungary (mod. Germ. *Ungarn*, Hungar. *Magyarorszóg* "Magyar State"), formally d. pl. of MHG *Unger*, mod. Germ. *Ungar*, "a Hungarian," with a learned *a* looking back to med. Lat. *Ungaria*; this appears uninflected in *Ungerlant*, above. On this use of the d. pl. see under *Burgonden*. *Ungern* is mentioned in 1162, 1 as Rüedeger's point of departure (in 1166, 3 implicitly equated with *Hiunen-lant*) on his journey from *Etzeln burc* to his home in Pöchlarn (*Bechelâren* 1164, 1). *Ungern* is treated as a synonym of *Etzeln-lant*, *Hiunen-lant*, and *Ungerlant*, and thus applies in a general way to the Hunnish domain as this is conceived in *NL* (cp. stz. 1244). To translate this name "Hungary" or in German "Ungarn" is perhaps forced upon one *faute de mieux*, though such a rendering is at best a make-shift and only partially covers the territory intended by the poet.

Although "Hungary" (*Ungern*, *Ungerlant*) is etymologically and, indeed, historically quite unrelated to the "land of the Huns" (*Hiunen-lant*), the virtual identification of the two terms as made by the poet (see also under *Hiune*, above) is approximately correct geographically and is in a sense understandable enough. In the second third of the fifth century A.D. the Huns (*Hiune*) under the leadership of Attila (MHG *Etzel*) and others had occupied much of eastern Europe, with their power centering near Budapest; it was with this nation, soon afterward dispersed, that the Burgundians under *Gundicharius* (MHG *Gunthere*) came into fatal conflict (see under *Burgonde*). Thus, from a narrowly historical point of view only *Hiunen-lant* or *Etzeln-lant*, but not *Ungerlant*, is appropriate in *NL* which purports to record events involving the above-mentioned peoples, Huns and Burgundians. Nearly four centuries after the dispersal of the Huns, the Danube valley (Hungarian Plains, *Pascua Romanorum*) was occupied (*ca.* 900 A.D.) by an altogether different people, the Magyars, for whom the general European designation is Ungar, Hungarian, and the like. Since the Hungarians, i.e., Magyars, took over a part of Europe formerly the center of gravity (Hungary) of Attila's Huns, an early uncritical identification and partial confusion of the two names not unnaturally set in (Tonnelat 317 ff.). The similarity of these ethnic names is more striking in mod. English (*Hun*: *Hungarian*) and certain other mod. languages where partial assimilation of the latter to the former name has taken place than in MHG *Hiune* vs. *Unger*, mod. Germ. *Hunne* vs. *Ungar*, and certain other languages (see below). The Hungary name appears to look back to *Ugra*, originally the country on either side of the Ural Mts., whence the ethnic name *Ugri*, Byz. Gk. 'Ουγοῦροι, surviving in such learned terms as "Ugro-Finnish" and the like; Finn. *Unkari* "Hungary" obviously derives from Germ. Borrowed early into Slavic, the first syllablle *Ug-* developed, as in certain other loans, a nasal vowel (a phenomenon reflected, e.g., in Germ. "Samstag;" see Kluge-Götze *s.v.*), yielding OSlav. *angrin'*, whence the *Ung*-forms characteristic of the name Hungary, Ungarn, etc.: Byz. Gk 'Ουγγροι, med. Lat. *Ungari*; Pol. *Wegry*, pl., with nasalised *e*, whence Russ. *Vengrija*, preserves the OSlav. nasal vowel; Serb. *Ugarska*. See J. Darkó, *Byzantinische Zs.* XXI (1912), 477 ff.; K. B. Wiklund, *Nordisk Familjebok* XXX (rev. ed., Sthlm., 1920), 1069-1070; *Deutsches Wtb.* under "Ungar, -er;" Metzenthin 112-113 under "Ungaraland;" Egli 954-955 for older etymologies.

Subsequent confusion with the Hun name with its initial *H-*, discussed above, led to med. Lat. *Hungaria*, Engl. *Hungary*, Welsh *Hwngri*, Fr. *Hongrie* (OFr. with and without *H-*, Langlois 344-345 under "1. Hongrie"), Du. *Hongarije*.

VERGEN, a locality said to be on or on very near the Danube (*Tuonouwe*), all but certainly stands for mod. Pför(r)ing, Lower Bavaria, with which it is commonly identified. Andree 70 F4. It is mentioned in 1291, 1 as the point at or near which Gîselher, Gêrnôt, and others take leave of Kriemhilt en route to meet Etzel: overnight shelters (*nahtselde*), mentioned in 1288, 3 as being erected by the Danube shore, would seem to be at some point before reaching *Vergen* and were perhaps prepared in advance (Weller *ZfdA* LXX [1933], 49). See also Dehio *SD* 383. It is evidently thought of as not far from the Bavarian frontier; cp. *si zogeten . . . nider durch Peyerlant*, 1295, 1.

Vergen is formally an oblique case (d. pl.?) of OHG *ferjo*, wk. m., MHG *verge*, Germ. (poet.) *Ferge* "ferryman" "boatman" (Kluge-Götze *s.v.*); *ze Vergen* would thus mean "at the ferrymen's" or the like and hence be comparable to *Mûtâren*, above. See Helbok 57 *ad fin.* for names in *-fähre* (MHG *vere*). If the identification with Pföring is correct, as it all but certainly is, the *NL*-form of the name is wrong or, less likely, a unique variant, in that all other early forms of Pföring are in *-inga* (*-e*); *NL Vergen* would answer to a mod. *Fergen*, *Vörgen*, or the like. For forms of Pföring see Oesterley 523; F-J II, 479, 1574, 1662 (Rom. *Celeusum*, on which see Holder I, 886). The Pföring name, more or less like *Vergen* of *NL*, means "(the place of) the people living by a ferry;" so Kauffmann II, 322; see also Weber *ZfdA* LXIII (1926), 135; *idem*, *ZfdA* LXIX (1932), 224.

VLACHE (Bartsch), see *Walache* (de Boor).

VLACHEN-LANT (Bartsch), see *Walachen-lant* (de Boor).

WALACHE, wk. m., a Vlach, Rumanian, inhabitant of *Walachen-lant* (*q.v.*), mentioned in the pl. in 1339, 2 in a catalogue of Etzel's Slavic and Balkan allies (Hempel 15 for literature); their leader is Duke Râmunc. The Vlachs or Walachs were a Romanic-speaking people (see Niederle I, 68-69), widely disseminated in south-eastern Europe (see *Encyclopaedia Britan.* under "Vlach"), principally in Rumania (see *NED* under "Walach"). Accordingly, any unmodified rendering "Walachian" (Germ. *Wallache*) with its inevitable suggestion of a resident of the later principality or state (*ca.* 1300) of Walachia (Germ. *Wallachei*) is misleading (see *Walachen-lant*), as is de Boor's comment *ad loc.*: "hier wohl südöstliche Slawenvölker," which surely wrongly suggests Bulgars, Serbs, and what not. "Vlach" or "Rumanian" is probably the safest and, desirably, most noncommittal definition of *Walachen* of *NL*.

This ethnic name looks back to a Celtic stem **volko-* (cp. Caesar's *Volcae*, Celtic tribe centering on Narbonne, dep. Aude, France) of uncertain meaning, taken into Gmc. as *wal(a)ha-*, probably in the sense "Celtic slave" (Schwarz *ZONF* 1, 91-92); as applied to Celtic peoples it is preserved in OE *Wealh* "Briton" "Welshman", Engl. *Welsh* (see *NED* under "Welsh" and cp. "Walloon", Du *Waal*). Elsewhere the Gmc. word is applied in various ways, sometimes in a disparaging sense, to Romanized natives of the provinces of the Roman Empire; cp. Schönfeld 250 under "Walagothi" "Goths resident in Italy." From Gmc., perhaps specifically from Go. **Walhos*, comes OSlav. *Vlachu* "Rumanian," also "Italian" (see *NED* under "Vlach" and cp. Pol. *Wlochy*, pl., "Italy"). See Holder III, 436-439; Egli 983-984; Much in *Reallexikon* IV, 423-425 under "Volcae;" Karsten 188-189; Kluge-Götze under "welsch," also cp. "Wallach" "gelding"; Metzenthin 114 under "Valir", and cp. 12-13 under 'Blökumannaland" for runic Swed. *Blakumen* "Vlachs".

WALACHEN-LANT, n., "land of the Vlachs, Rumanians," mentioned in 1343, 1 as the homeland of Duke Râmunc, serving at Etzel's court, and by implication the home-land of the *Walachen*, *q.v.* for the history and etymology of the ethnic name. On the structure of this determinative compound see under *Burgonden-lant*.

Walachen-lant, answering to med. Lat. *Walachia*, designates an extensive area in the lower Danube valley, more or less between the eastern borders of Hungary (*Ungerlant*) and the Black Sea; it would thus approximately correspond to modern Rumania (always of uncertain boundaries), settled by Vlachs or, as the racially very mixed residual legatees of the Roman province of Dacia prefer to be known, Rumanians. *Walachen-lant* of *NL* should, however, almost certainly not be rendered by Rumania (Germ. *Rumänien*), still less by Walachia (Germ. *Wallachei*), which in modern parlance can only properly refer to a principality or state founded in the late thirteenth century, presumably by Radu Negru who led a group from Transylvania (Germ. *Siebenbürgen*). See *Encyclopaedia Britan.* under "Rumania" and "Vlach." ON *Blökumannaland* "*Walachen-lant*", not "Wallachei" of Metzenthin 12-13, no doubt shows some popular adaptation to ON *blaka*, f., of various meanings; it is clearly not adapted to *Blökkamannaland* "Ethiopia," "Africa."

WASKENSTEIN, m., lit. "cliff, crag, fastness of the Vosges Mts." (Germ. Vogesen) in Alsace, mentioned by Hildebrant in 2344, 2 as the spot before which Hagen sat on a shield, while Walter (of Aquitaine) slew the latter's Frankish(!) kinsmen. The poet seems certainly to have had in mind *Waltharii poësis*, ll. 632-639 (see Althof II, 195-196; Smyser-Magoun 126), where Hagen sits down on a near-by hill and looks on; in the *Waltharius* there is no mention of a shield. In *Waltharius*, l. 1176, Walthari rests by lying down and using his shield as a pillow; the *NL* poet, who quite likely knew the Lat. poem (cp. Tonnelat 191), may have confused the two passages. In the *Waltharius* this spot in the Vosges is described as a narrow gorge (ll. 493-496 and cp. 1155; Althof II, 166-168; Smyser-Magoun 123) and is referred to in ll. 559, 1118, 1136 and is evidently conceived as a fastness of sorts. The gorge is not named though the scene is laid in the Vosges (*Vosagus*, *Vosegus*, *passim*) and probably cannot be localized, especially since the description would seem more or less to follow Classical convention (Althof II, 167-168). Cp. stz. 1756 for another allusion to the Walter story though without geographical indications.

By the time of *NL*, and thus far later than any possible date of the *Waltharius*, it is, however, not unlikely that *Waskenstein* had come to be equated with two cliffs in Lower Alsace, 2 or 3 km. N of Ober-Steinbach on the highway between Weissenburg i. El. and Bitsch in Lorraine (cp. Oesterley 738 under "Wassenstein"). For forms see F-J II, 1418-1419, and Schneider I, 339. In *Ths. passim* "*af Vaskasteini*" occurs as a stock epithet for Valtari (Walter) as though *Vaskasteinn* were his manor. Despite a certain geographical-legendary appositeness this name can have nothing to do with *Vasconia* "Gascoigne" "Gascony" or the Basque country.

On the first element *Wasken-* see under *Waskenwalt*, on *-stein*, though here no man-made fortress, under *Isenstein*.

WASKENWALT, m., lit. "Vosges Forest," more generally the Vosges Mountains, a chain running north from Belfort (France) and mostly parallelling the Rhine (Germ. *Vogesen*, also *Wasgenwald*, Fr. Vosges, whence the Engl. form), mentioned in 911, 3 as the scene of the hunt in the course of which Sîvrit lost his life. In 926, 1 this forested area is described as "deep" (*tief*) and "green" (*grüene*); the growth seems to have been characterized by "firs" (*tan*, 913, 4; 932, 3; 941, 3) which may, however, merely stand for "forest" in general. In 940, 3 and 941, 3 "mountain and forest" are combined: *den berc und ouch den walt*; *der berc und ouch der tan*. The forest is well stocked with game: bears and boars (911, 2; 938, 4; 946, 4), young boars (935, 3), lions (!) (936, 3); bison and elk (937, 1), auerox (937, 2); hart and hind (937, 4); leopard(!) (953,1), the mysterious *ludem* (otter?) (954, 1); game in general (*wilt*: 928, 2; 929, 4; 943, 3; *tiere*: 933, 3; 943, 3). A camp (*herbergen*: 928, 1; 944, 4; 945, 3; 947, 3; 951, 1) is set up on the edge of the forest (*für den grüenen walt*, 928, 1) where equipment and supplies are brought for picnic cooking. Nearby is the spring (*kalter, küeler brunne, q.v.*) by which Sîvrit meets his end. This famous hunt in the Vosges, to which canto xvi is devoted, has been the subject of considerable discussion and commentary, notably by E. Matthias, 'Die Jagd im *NL*,' *ZfdPh* XV (1883), 471-501 (on hunting); Fr. Zarnke, 'Die Jagd im *NL*,' *PBB* X (1884), 384-402 (on the site); Heusler 259-269; P. H. v. Schmertzing, *Die deutsche Jägersprache bis zum Anfang des 16. Jahrhunderts*, unpubl. Harvard diss., 1938 (for detailed discussion of hunting terms).

At this point attention may be drawn to the gross geographical inconsistency connected with the site of the hunt, unambiguously said to take place in the Vosges, namely, on the same (right) bank of the Rhine as Worms, yet said to be reached by crossing the Rhine from Worms, i.e., over to the left bank: *si wolden über Rîn* (918, 3); *geladen vil der rosse kom vor in über Rîn* (Gunthere *et al.*) (927, 1); similarly after Sîvrit's death and after night-fall (1002, 1) the company comes back to Worms from across the Rhine: *Do erbiten si der nahte und fuoren über Rîn*. There is no composing this awkwardness, due either to the poet's unfamiliarity with the geography of the region or to his extreme carelessness. The *C*-text reviser (911, 3; 1001, 7), who knew better, altered *Waskenwalt* to *Otenwalt* (the Odenwald), *q.v.*

The first element in *Wasken-walt* looks back to Celto-Roman *Vosegus*, *-sagus* (whence Fr. *Vosges*), also, but less correctly, *Vogesus*, name-type which has yielded the semi-learned mod. Germ. *Vogesen* (Behaghel 376 §352 on this and other examples of metathesis of non-adjacent consonants in place-names). For early name-forms see Oesterley 720, col. 2; F-J II, 1418; Althof 164, n. 490. The name-type with *a*, as in *NL*, looks back to such forms as *Vasaga*, *Wasegus*, *Wasacus*. Celto-Rom. *Vosegus* (Holder III, 448-450), is composed of the Celtic prefix *vo-* "lower" "lesser" (WP I, 193) and *sego-* of uncertain meaning (Holder II, 1444; WP II, 482, "firm" "lasting"), found in other Celtic names. Under *Vosegus* Holder suggests that the name may somehow describe the Vosges as a "lower" or less imposing mountain formation than the not distant Alps, while Georges Dottin in his *Manuel pour serir à l'étude de l'antiquité celtique* (2d ed., Paris, 1915), p. 327, suggests that we may have to do with a theophoric name "*Vosegus*, dieu des Vosges" (see Holder III, 450-451). *Non liquet*. The first element(s) *Voseg-* can have nothing to do with Germ. *Wasen* "lawn" "damp ground" (Kluge-Götze *s.v.*), so pertinaciously urged by Georges Müller, *Wasigen oder Vogesen*, 2d ed., Strassburg i. El., 1935. On the second element *-walt*, see under *Otenwalt*, above.

WEGE, m. pl. (of *wec*, m. "road, way"), lit. "routes" "roads", but commonly in the sense of "route" and thus at times almost equivalent to *strâze*. *Wege* seems to refer (I) in 739, 4 and 767, 1 quite specifically to the route between Worms and Norway; (II) to the "Nibelung Route" (see *Strâze* III, above) in 1252, 3; 1301, 3; 1305, 2; 1338, 1; 1464, 2; 1494, 2; 1593, 3; 1617, 2; 1637, 1; 1642, 2.

WIENE (*STAT ZE*), Vienna (Germ. *Wien*, *die Stadt Wien*) on the Danube (*Tuonouwe*), Lower Austria. Andree 77 E1; Baed. *AH* 22. It is mentioned in 1162, 3; 1164, 2 as a town of transit; in 1361, 2; 1365, 3; 1375, 1 as the place of Kriemhilt's marriage of Etzel and the scene of a magnificent seventeen days' celebration at Whitsuntide (1365, 1; 1367, 1; 1375, 1). On the determinative phrase *ze Wiene*, see under *Wormez*. In comparison with *Wormez* and *Etzeln burc* little is told about the town: some of the guests were lodged in it (*herbergen*, vb. 1362, 3), but many could not be put up (1363, 1) and had to find quarters (*herberge* 1363, 3) out in the country (*lant* 1363, 3), as in Passau (*Pazzouwe*), where they no doubt had to put up in tents. In the days of the poet Vienna was the capital of *Osterrîche* under Leopold VI (Tonnelat 108-109; 331 ff., 340) and a commercial center of importance, situated at the confluence of the Wien river (*die Wien, Wienfluss*) and the SW arm of the Danube which in recent times has been converted into the Donau-Kanal; thus *Wiene* of *NL* covered an area approximately that of the present "Innere Stadt." On Vienna in the period 1198-1230 see Müller in *op. cit. infra*, I, 246-253 and map facing p. 252; on the festivities attendant on the royal couple's arrival see Heusler 139, 171; on Rüedeger in Vienna see A. Knöpfler, *Germania*, XIX (1874), 343-346.

The oldest name of this settlement, later a Roman garrison town and outpost against the Marcomen and Quads, was Celt. *Vindobona* "white house or building;" on Celt. *vindo-* "white" see WP I, 237, on *bônâ* "building" see Holder I, 485-486, and for the whole Celto-Roman name Holder III, 344-345. The Celto-Roman name does not survive in the modern name Vienna, OHG *Wienni*, etc., MHG *Wien*(*e*), Germ. *Wien*, for early forms of which see Oesterley 762; F-J II, 1589. The town-name is from the river Wien (*die Wien*, *Wienfluss*), tributary of the Wiener or Donau-Kanal, almost surely looking back to a Celtic **Vêdunia*, formed on the base *vêdo-* "woodland" "forest" "game" (WP I, 314) and thus meaning "woodland stream" or "stream in country rich in game." Czech. *Víden*, Pol. *Wieden*. So R. Much in art. 'Die Namen im Weichbilde Wiens" etc., in the invaluable miscellany, *Wien, sein Boden u. seine Geschichte* (ed. O. Abel, Vienna, 1924), pp. 253-254; so Steinhauser 6; Weinberg 43; see

Sturmfels EL 152 (fanciful); Egli 1000-1001 for earlier interpretations, also R. Müller's chapter "Der Name Wien" in Heinr. Zimmermann, ed., *Geschichte der Stadt Wien*, I (Vienna, 1897), 160-184, not only for older interpretations but for a full history of the later name. Schwarz *PBB* L (1926), 275, n. 1, withdrawing an earlier suggestion (modifying Schwarz 28), suggests that OHG *Wienni*, etc. and Slav. *Víden* look back more immediately to a sixth-seventh century Romanic development of the Celtic name, viz. *_Vednia_ or *_Veðnia_, with later assimilation in Germ. of *dn* (*ðn*) > *nn*. Connections of the name of the Wien river with *Weidling*, stream and Vienna suburb, seem dubious (Steinhauser 18). Engl. *Vienna*, Fr. *Vienne*, etc., reflect med. Lat. *Vienna*, based on the Germ. name; the mod. Lat. (bibliographical) name is *Vindobona*. Fr. Vienne, dep. Isère (Caesar's *Vienna Allobrogum*) shows a wholly accidental agreement with the Austrian name.

WORM(E)Z (*STAT ZE*), Worms on the left bank of the Rhine, near its confluence with the Worms R., Rhine-Hesse, in *NL* thought of as the chief town of the Burgundians, may have entered the legend somewhat late (Heusler 49). In the days of the poet and, indeed, until *ca.* 1800 Worms was something of a free city. Andree 67 F1; Baed. *Rh.* 370 ff.

The name is used without qualification in the headings to cantos iii, x, xix, also in 222, 1; 542, 1; 594, 4; 808, 3; 1102, 1. More often it is followed by some topographically descriptive phrase: *an den Rîn* 106, 3; 144, 3; 175, 1; 529, 3; 539, 2; 569, 3; 1095, 1; less often *bi dem Rîne* 6, 1; 1415, 2; *über Rîn* 172, 3; 703, 3; 1405, 2; 1714, 3; 1739, 3; 1809, 3; 2044, 3; 2093, 3; *ûf den sant* 71, 1; 261, 3; 560, 3; 563, 3. Elsewhere the determinative phrase *ze Wormez* (see Paul-Gierach 197 §275) defines a geographical or architectural term: *burc* 528, 3; *hof* 1508, 1; *lant* ("Kreis") 1430, 2; *stat* 800, 1; 1025, 4. Since a great deal of the important action of pt. i takes place in or near Worms, it is not surprising that it should be more frequently mentioned than any other settled place, often indirectly as *stat*, f.: 152, 1; 248, 1; 795, 1; 1036, 3; 1057, 1; 1176, 4 (*wît*); 1288, 4, and *burc*: 528, 3; 581, 3; 601, 3; 624, 3; 784, 3; 1027, 3. In 1036, 4 and 1037, 4 the townspeople are *burgære*, in 1057, 1 *liute von der stat*; these same people may be the *lantliute* of 1062, 3, though this may mean "inhabitants of the Worms district (Kreis Worms)." The city is thought of as big: *Wormez diu vil wîte* 808, 3; *in der wîten stat* 1176, 4. A street (*strâze*) in, or perhaps a highway leading into, Worms (as if Wormserstr.), is mentioned in 243, 3. The river-side location is stressed by the descriptive phrases *an den Rîn*, etc., listed above; this same feature is also alluded to by the word *sant* "beach" in 376, 1; 590, 1; 1526, 3. The Rhine shore opposite the town (i.e., right bank) is *stat*, n. in 579, 2 and 580, 4; *habe* of 586, 1 is the landing place or pier for Worms itself. In many instances included under *Rîn* II, above, Worms is no doubt specifically thought of or meant. Outside of the town and evidently convenient for jousting and other chivalric sports is a *velt* "big open place" (233, 2; 594, 4; 596, 3; 600, 1; 788, 3), presumably on the water-front (cp. *man sach si tägelîchen nu rîten an den Rîn*, 265, 1), where pavillions (*hütten*, *gezelt*) might be erected (594, 3; 597, 3), similarly on the right bank opposite the town (1515, 1).

Among the architectural monuments mentioned the cathedral, dedicated to SS. Peter and Paul (see Baed. *Rh.* 372-373; Dehio *SWD* 458-459), with appurtenances is prominent, esp. as the scene of the flyting or senna of the two queens, Prünhilt and Kriemhilt, in canto xiv, and of Sîvrit's funeral obsequies in canto xvii. It is thought of as large: *wît* in 812, 3; 838, 1, and is usually called *münster*: 300, 1; 302, 1; 644, 3; 812, 1; 812, 3; 827, 4; 830, 3; 833, 3; 835, 1; 838, 1; 843, 2; 845, 1; 871, 2; 1005, 1; 1007, 1; 1039, 2; 1040, 1; 1048, 2; 1052, 1;

1062, 2; 1064, 3; 1102, 1; once it is referred to as *tuom* (Thum, Dom, 811, 2). It is referred to as *kirche*: *ze kirchen* in 299, 3; 1102, 4; heading to canto xxxi; 1851, 3; 1855, 2. The cathedral stands in a spacious cemetery or close(?): *kirchof wît* (1062, 2), where Sîvrit's grave (*grap*, 1064, 3) seems to have been (cp. stz. 1103); the close is viewed as grass-grown (cp. *gras*, 812, 1). Near the cathedral, and inferentially near Sîvrit's grave, is a large and imposing edifice of some sort (*gezimber*, 1102, 1), constructed for Kriemhilt and her retinue at some time subsequent to Sîvrit's death. Various activities centering on, or closely associated with, the cathedral form a conspicuous part of the Christian colouring of the poem; on this in general see Muth 417, n. 1, and A. E. Schönbach, *Das Christentum*, pp. 1-56. While there is no need to suppose that the poet actually knew Worms—quite the contrary—, it is of interest to point out that in the thirteenth century the cathedral was that dedicated to St. Peter (see Dehio *SWD* 458-459, Lehmann 114).

As in the case of *Etzelen burc*, above, the poet further pretends to some knowledge of secular monuments, of which the most prominent is Gunthere's large and handsome palace (*palas wît*, 599, 3; *rîche* in 798, 1). It is a *palas* in 511, 1; 565, 1; 599, 3; 602, 3; 798, 1; 1025, 3; 1433, 1; 1438, 1; in the sense of "residence" or even "castle" it is called *hûs* in 83, 2 and 528, 2. Within or adjoining the palace is Gunthere's spacious hall (*sal*: 78, 2 [*wît*]; 247, 3; 306, 2; 565, 2; 610, 1; 611, 3 [*wît*]; 626, 3; 657, 3; 767, 4; 807, 1; 871, 3; 1025, 3; 1185, 2), the scene of much festivity. A stair (*stiege* 610, 2; 626, 3) leads to the hall from out of doors. Sleeping rooms and other private quarters are various called *gadem* (603, 3) and *kemenâte* (225, 1; 280, 1; 558, 4; 631, 2; 653, 1; 1003, 4; 1006, 3; 1009, 4; 1222, 2), some no doubt conceived as being detached from the main building. Windows (*venster*), chiefly mentioned here as elsewhere as places convenient for observation, esp. by ladies, are referred to in 84, 1; 133, 3; 243, 2; 377, 1; 396, 3; 639, 3; 647, 1; 741, 1; interior walls (*wende*) are mentioned in 565, 1; 637, 2; 649, 4; 672, 4, the last three being in Kriemhilt and Guntere's bridal chamber, provided with a barred door (*türe*, *rigele*, 664, 3-4). The door (*türe*) to Kriemhilt's dwelling is mentioned in 1004, 1; 1226, 1; 1277, 1. The treasury or treasure-chambers are *kamere* (1060, 3; 1270, 3; 1276, 4). The palace court-yard is *hof* (133, 1; 571, 1; 658, 1; 741, 2; 742, 2; 1508, 1); in the phrase *ze hove*, often used with the vb. *gân*, *hof* refers to Gunthere's court in a general sense: "to go to court," "to be at court," and the like. Quarters, presumably mostly out in the town, for putting up visitors are *herberge* (128, 2; 319, 1; 512, 1; 653, 4; 881, 1; 1176, 4; 1179, 1; 1242, 1; 1433, 4; 1450, 4; 1457, 1) and are indicated by the vb. (*ge*)*herbergen* in 152, 1; 248, 1; in 1057, 1 *herberge* is used for the home of townspeople. *Hûs* in 833, 4 seems to refer to what may be thought of as Sîvrit's head-quarters. A town-gate is mentioned twice (*bürgetor*: 582, 2; 797, 1). For an attempt, apparently in a measure successful, by Robert Sommer, *Die Nibelungenwege von Worms über Wien zur Etzelnburg*, etc., Weimar, 1929 (illustrated), to localize the *palas* of *NL*, see Weber *ZfdA* LXIX (1932), 222-223; see F. Falt, 'Das Nibelungenlied u. seine Beziehungen zu Worms,' *Monatschrift f. rheinisch-westfälische Geschichtsforschung u. Altertumskunde*, III (1876), 248 ff. I regret that I have not been able to examine Eugen Kranzbühler, *Worms und die Heldensage*, Worms, 1930.

The name Worms looks back to Celto-Roman *Borbeto-*, *Borbitomagus*, etc. (cp. *IA* 355, 3; 374, 6), meaning "settlement (Celt. *magos* "plain" "village") on the Borbita R. (now the Worms R.)." It was the town of the Vangiones, whence a later temporary designation *Vangio*, *Vangionum civitas*. Subsequently this was replaced by a reduced form of the earlier name and appears as *Wormatia*, immediate source of OHG *Wormiza*, *Wormaza*, MHG *Wormeze*, *Wormize*, *Worm*(*e*)z, mod. *Worms*. The underlying river-name *Borbita* "the Worms R." is quite likely Ligurian and is of uncertain meaning. MHG *Wormez* appears as *Garmaise* in the OFr chansons-de-geste (Langlois 257). For forms and historical and etymological discussion see Oesterley 785; F-J II, 1424-25; Kauffmann I, 242, n. 16; II, 152, n. 6, 306; Holder I, 489; Longnon 113 §465; Gröhler I, 9-10; d'Arbois de Jubainville II, 117 ff., esp. 121-122; Althof II, 151-152; Karsten 62. On *Verniza*, etc. of *Ths.* see Magoun, *Mediaeval Studies*, VI (1944), 329-330.

ZAZAMANC, a locality mentioned in 362, 2 as a source of good silk (*sîde*) as green as clover; see under *Azagouc* and *Arâbî*(*n*) for other names introduced in similar connections. *Zazamanc*, like *Azagouc*, (*q.v.*) was surely taken by the *NL* poet from Wolfram's *Parzival*, where it occurs six times. This strange name—assuming gross scribal distortion—not impossibly became attached to the Perceval story through Gaius Iulis Solinus's third-century geographical compilation *Collectanea rerum memorabilium*, where in ii, 29, 1 mention is made of the *Garamantae* i.e., *Garamantes*, a tribe of oasis-dwellers in the eastern Sahara; their chief town (whence the ethnic name) was *Gamara* (ruins at Derma-el-Kedima, NE of Murzuk) in the district of Fezzan (ancient Phazania) in southern Tripolitania. See PW 13. Halbb. (1910), col. 751-52.

ZEIZENMURE, f., Zeiselmauer, Lower Austria (Andree 77-78, R. 77 C 2), mentioned in 1332, 3 as near the Traisen (*Treisem* 1332, 1) and the site of a splendid *burc* (1332, 2), once a residence of Frau Helche, Etzel's deceased wife, and on the Nibelung Route (*Strâze* III, 1336, 2), presumably the Zeiselstrasse mentioned below. For map showing Zeiselmauer and environs in detail see *Gesch. d. Stadt Wien* I, 228, cited under *Wiene*. In 1336, 1 it is further said that Kriemhilt remained there four days before proceeding to Tulln (*Tulne* 1341, 2). Everything points to Traismauer (see *Treisenmûre*, above) being the appropriate name for this point in the itinerary, i.e., about midway between Mautern (*Mûtâren*) and Tulln (*Tulne*), and many, perhaps most, scholars and editors (e.g., Bartsch vs. de Boor) would emend here. Nevertheless, if this is an error of geography—as it seems to be—, it is difficult not to lay the lapse at the poet's door and despite the fact that it is altered or corrected by the C-redactor to *Treisenmûre* (cp. the latter's editorial activity noted under *Waskenwalt*). What the poet, in some measure no doubt affected by the similar second element *-mûre* "walled place or town" (Helbok 38), obviously has done, is to substitute for *Treisenmûre* the name *Zeizenmûre*, site of the ruins of ancient *Citicum* (Weinberg 76) in the vicinity of Tulln; the name is also preserved in Zeiselstrasse in back from the Danube and running between Traismauer and Tulln (Baed. *AH* 132-133, map). For forms see Oesterley 792 under "Zeiselmauer;" F-J II, 1451.

If the name is Gmc., the first first element may well represent the gen. of the personal name OHG *Zeizo*, wk. m. "agreeable, cheerful fellow" and the whole thus mean "Zeizo's walled place" or the like; cp. OHG, MHG *zeiz*, OE *tát*, ON *teitr*, Icel. *teitur* "cheerful, agreeable", also such OE pers. names as *Tǽtwine* and the Germ. family-name *Zeiss* (esp. of Jena). See F-J II, 1939, for unlikely derivation from Celto-Rom. *Citium* (Pichler II, 133: *Cetium*, *Citium*).

III. INDEX OF ABBREVIATIONS

AfslPh	*Archiv für slavische Philologie.*
Althof	Hermann Althof, *Waltharii poësis: das Waltharilied Ekkehards I.*, Pt. ii

(Kommentar), Leipzig, 1905. Cited by page.
Andree Richard Andree, E. Ambrosius, ed., *Andrees Allgemeiner Handatlas*, 7th ed., Leipzig, 1921.
d'Arbois de Jubainville Henry d'Arbois de Jubainville, *Les premiers habitants de l'Europe*, Vol. II (2d ed.), Paris, 1894. Cited by page.
Baed. *AH* Karl Baedeker, ed., *Austria-Hungary*, etc., 11th ed., Leipzig, 1911.
Baed. *NI* *idem*, *Northern Italy*, 15th ed., Leipzig, 1930.
Baed. *Rh.* *idem*, *The Rhine*, etc. 18th ed., Leipzig, 1926.
Baed. *SG* *idem*, *Southern Germany*, 13th ed., Leipzig, 1929.
Behaghel Otto Behaghel, *Geschichte d. deutsch. Sprache*, 5th ed., Berlin, 1928.
Braune-Helm Wilh. Braune, Karl Helm, ed., *Althochdeutsche Grammatik*, 5th ed., Halle, 1936.
CMH *The Cambridge Medieval History*, New York-Cambridge, 1936 ff.
Cross S. H. Cross, "The Russian Primary Chronicle," introduction and translation, *Harvard Studies and Notes in Philology and Literature*, XII (1930), 77-297 (map at end).
Curme G. O. Curme, *A Grammar of the German Language*, etc., rev. ed., New York, 1922.
de Boor Helmut de Boor, ed., *Das Nibelungenlied hgg. v. Karl Bartsch*, 10th ed., Leipzig, 1940.
Dehio-Gall *Rh.* Georg Dehio, Ernst Gall, ed., *Handbuch d. deutschen Kunstdenkmäler*. Vol. II. *Die Rheinlande von d. holländischer Grenze bis zum Rheingau*, Berlin, 1938.
Dehio *SD* Georg Dehio, *Handbuch d. deutsch. Kunstdenknäler*. Vol. III. *Süd-Deutschland*, Berlin, 1908.
Dehio *SWD* Georg Dehio, *Hdb. d. deutsch. Kunstdenkmäler*. Vol. IV. *Südwestdeutschland*, Berlin, 1911.
Egli J. J. Egli, *Nomina geographica: Sprach- und Sacherklärung von 42000 geographischer Namen aller Erdräume*, 2d ed., Leipzig, 1893.
EI *Enciclopedia italiana di scienze, lettere ed arte*, Rome, 1929-37.
Feist Sigmund Feist, *Etymologisches Wörterbuch d. gotisch. Sprache*, 3d ed., Leiden, 1938.
F-J Ernst Förstemann, Hermann Jellinghaus, ed., *Altdeutsches Namenbuch—Ortsnamen*, 3d ed., Vol. II in 2 pts., Bonn/Rh., 1911-1916. Cited by part and column.
Gröhler Hermann Gröhler, *Ueber Ursprung u. Bedeutung d. französischen Ortsnamen*, 2 vols., Heidelberg, 1913-1933.
Helbok Adolf Helbok, *Die Ortsnamen im Deutschen siedlungs- u. kulturgeschichtlich betrachtet* (Sammlung Göschen Bd. 573), Berlin, 1939.
Hellquist Elof Hellquist, *Svensk etymologisk Ordbok*, 2d ed., Lund, 1935-1939.
Hempel Heinr. Hempel, *Nibelungenstudien u. Nibelungenlied, Thidrikssaga u. Balladen*, Heidelberg, 1926.
Heusler Andreas Heusler, *Nibelungensage u. Nibelungenlied*, 3d ed., Dortmund, 1929. (Classic modern treatment of the legendary and poetic antecedents of *NL*, with much invaluable incidental comment on the poem itself.)
Holder Alfred Holder, *Alt-celtischer Sprachschatz*, 2 vols. and supplement (incomplete), Leipzig, 1891 ff.
IA Otto Cuntz, ed., *Itineraria Antonini Augusti et Burdigalense*, Leipzig, 1929. Cited *IA* and reference to the numbered sections.
Karsten T. E. Karsten, Fernand Mossé, transl., *Les anciens germains*, etc. Paris, 1931.
Kauffmann Fr. Kauffmann, *Deutsche Altertumskunde*, 2 vols., Munich, 1913-1923.

Kluge-Götze Fr. Kluge, Alfred Götze, ed., *Etymologisches Wörterbuch d. deutschen Sprache*, 11th ed., Berlin, 1934.

Kluge *Stbldg.* Fr. Kluge, O. Sütterlin and E. Ochs, edd., *Nominale Stammbildungslehre*, 3d ed., Halle, 1926.

Kluge *Wtbldg.* *idem*, *Abriss d. deutschen Wortbildungslehre*, Halle, 1913.

Körner Josef Körner, *Das Nibelungenlied*, Leipzig, 1921. (Compact summary of main data concerning *NL.*)

Langlois Ernest Langlois, *Table de noms propres de toute nature compris dans les chansons de geste imprimées*, Paris, 1904.

Lichtenberger Henri Lichtenberger, *Le poème et la légende des Nibelungen*, Paris, 1891. (Still very useful, esp. for bountiful references to *NL* characters and places mentioned in other MHG epics.)

Longnon Auguste Longnon, *Les noms de lieu de la France*, etc., Paris, 1920.

Matthias Walter Matthias, *Die geographische Nomenclatur Italiens im altdeutsch. Schrifttum*, Leipzig, 1912.

Metzenthin E. M. Metzenthin, *Die Länder- u. Volkernamen im altisländisch.* (rectior *altnordischen*) *Schrifttum*, Bryn Mawr, Penna., 1941.

Mezger Fritz Mezger, *Angelsächsische Völker- u. Ländernamen*, Berlin, 1921.

MLR *Modern Language Review.*

Much *Germania* Rudolf Much, *Die Germania des Tacitus*, Heidelberg, 1937.

Muth Richard v. Muth, *Einleitung in das Nibelungenlied*, 2d ed., Paderborn, 1907.

NED *A New English Dictionary on Historical Principles*, Oxford, 1888-1933.

Niederle Lubor Niederle, *Manuel de l'antiquité slave*, 2 vols., Paris, 1923-1926.

Oesterley Hermann Oesterley, *Historisch-geographisches Wörterbuch d. deutschen Mittelalters*, Gotha, 1883.

Paul-Gierach Hermann Paul, Erich Gierach, ed., *Mittelhochdeutsche Grammatik*, 13th ed., Halle, 1939.

PBB *Beiträge zur Geschichte d. deutschen Sprache, begründet von Hermann Paul u. Wilh. Braune.*

Pichler Fritz Pichler, *Austria Romana*, 2 vols., Leipzig, 1902-1904.

PW August Pauly, Georg Wissowa *et al.*, edd., *Pauly's Realencyclopädie d. classischen Altertumswissenschaft*, new ed., Stuttgart, 1894 ff.

Reallexikon Joh. Hoops *et al.*, edd., *Reallexikon d. germanischen Altertumskunde*, 4 vols., Strassburg i. El., 1911-1919.

Schiffmann Konrad Schiffmann, *Historisches Ortsnamen-Lexikon des Landes Oberösterreich*, 2 vols., Linz, 1935.

Schiffmann *LE* *idem*, *Das Land ob der Enns*, Munich, 1922.

Schneider Hermann Schneider, *Germanische Heldensage*, 2 vols. in 3 pts., Berlin, 1928-1934.

Schönbach A. E. Schönbach, *Das Christentum in d. altdeutsch. Dichtung*, Graz, 1897.

Schönfeld Moritz Schönfeld, *Wörterbuch d. altgermanischen Personen- u. Völkernamen*, Heidelberg, 1911.

Schwan-Behrens Eduard Schwan—Dietrich Behrens, *Grammatik des Altfranzösischen*, 5th ed., Leipzig, 1919.

Schwarz Ernst Schwarz, *Zur Namenforschung u. Siedlungsgeschichte in den Sudetenländern* ("Prager Deutsche Studien," No. 30), Reichenberg, 1923.

Schwarz *OöO* *idem*, *Die Ortsnamen des östlichen Oberösterreich* ("Prager Deutsche Studien," No. 42), Reichenberg, 1926.

Smyser-Magoun H. M. Smyser-F. P. Magoun, *Survivals in Old Norwegian*, etc., ("Connecticut College Monograph, No. 1"), Baltimore, 1941.

Steinhauser Walter Steinhauser, "Zur Herkunft, Bildungsweise u. siedlungsgeschichtlichen Bedeutung d. niederösterreichisch. Orts- u. Flurnamen," *Jahrbuch für Landeskunde von Niederösterreich*, new ser., XXV (1933 for 1932), 1-48.

Sturmfels Wilh. Sturmfels, *Die Ortsnamen Hessens*, 3d ed., Giessen, 1936.

Sturmfels *EL* *idem*, *Etymologisches Lexikon deutscher u. fremdländischer Ortsnamen*, Berlin, 1925.

Ths. Henrik Bertelsen, ed., *Thiðriks saga af Bern*, 2 vols., Copenhagen, 1905-1911.

Tonnelat Ernest Tonnelat, *La Chanson des Nibelungen. Etude sur la composition et la formation du poème épique*, Paris, 1926. (Best up-to-date and comprehensive analysis and discussion of *NL* and its problems. Because of its lack of index fuller references than ordinary are given to this useful work.)

WP Alois Walde and Julius Pokorny, *Vergleichendes Wörterbuch d. indogermanischen Sprachen*, 3 vols., Berlin, 1927-1932.

ZfdA *Zeitschrift für deutsches Altertum u. deutsche Literatur.* Vols. cited according to the numbering of the original series.

ZfdPh *Zs. f. deutsche Philologie.*

ZfdU *Zs. f. deutschen Unterricht.*

ZfslPh *Zs. f. slavische Philologie.*

ZONF *Zs. f. Ortsnamenforschung*, 1925 ff., since 1937 *Zs. f. Namenforschung.*

Fin' Amors: the Pure Love of the Troubadours, Its Amorality, and Possible Source

A. J. DENOMY C.S.B.

I.

AFTER its first appearance with Guillaume IX, duke of Poitiers (1071-1127), it is customary to distinguish two currents or schools in the evolution of the courtly love lyric of the troubadours:[1] the realistic represented by Marcabru and, to a certain extent, by Bernart Marti, who, in spite of some differences, most closely approaches him in style and idea;[2] the idealistic or courtly school whose representatives are Jaufré Rudel and Bernard de Ventadour. Midway between the two and sharing the characteristics of both of them is Cercamon who thus serves as a transition between them.[3] The basis of the distinction is twofold: first, the pursuit of decency and nobility of expression on the part of the idealists on the one hand, and the rude, coarse, often gross style affected by the realists on the other; secondly, the realists evince a strong polemic note of reform of the social ills of their day as contrasted with the lack of dogmatic and social preoccupation of the idealists. The difference, however, would seem to go further. The contrast between the two schools is not merely literary or esthetic and social or moral. There is a question here of a difference in the conception of the nature of love, the new idea of love of the courtly idealists versus the old conception of the realists. Thus, Jeanroy speaks of Marcabru's praise of pure love, that is, of divine love in opposition to the profane love of the courtly poets.[4] The poetry of the realists is pictured as a reaction against a new type of love that has risen among the troubadours under the leadership of Eblo II of Ventadour. This new type with its sinful, demoralizing conception of love is the object of the realists' impassioned denunciation of illicit and adulterous love.[5] Hence, the difference is fundamentally between the new poetry, new morality, new conception of love of the idealists and those of the old, conservative realistic school.

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[1] Cf. Carl Appel, *Bernart von Ventadorn, seine Lieder* (Halle, 1915), pp. LXIII-LXXI; Ernest Hoepffner, 'Le Troubadour Bernart Marti', *Romania* LIII (1927), pp. 145-146; Alfred Jeanroy, *La Poésie lyrique des troubadours* II (Paris, 1934), pp. 14-17.

[2] Cf. Ernest Hoepffner, *op. cit.*, pp. 145-150.

[3] Cf. Alfred Jeanroy, *op. cit.*, p. 21. Here it is a question neither of precedence in time nor in influence but rather the direction Cercamon's poetry has taken. The question as to whether Marcabru was Cercamon's teacher or pupil is a complicated one and of no particular purpose to our study. A résumé of the controversy and the literature on the subject may be found in A. R. Nykl, *The Dove's Neck-Ring* (Paris, 1931), pp. lxxxi-lxxxiii, and *Troubadour Studies* (Cambridge, 1944) p. 4.

[4] Vers la même époque, Marcabru, à la fin d'une pièce où il exalte le pur amour, c'est-à-dire l'amour divin, s'élève contre l'amour profane. *Op. cit.*, p. 17. Cf. also Carl Appel, 'Zu Marcabru', *Zeitschrift für romanische Philologie* XLIII (1923), p. 450: Immer wieder macht er den Unterschied zwischen der *Fals' Amor*, die er, jedenfalls mit dem später im französischen so beliebten Wortspiel, auch als *amar* bezeichnet, und der *Fin' Amor*, schilt jene und erhebt diese zu den idealsten Höhen, jene die Liebe Wilhelms von Poitiers und der *Escola n'Eblo*, die neumodische, höfische, leichtfertige, die ehebrecherische Liebe der Trobadors, die andere die edle, altmodische, naturliche, die reine Liebe der ehelichen Gemeinschaft.

[5] Cf. Carl Appel, *Bernart von Ventadorn*, p. LXV, and Arthur Franz, *Ueber den Troubadour Marcabru* (Marburg, 1914), p. 5. Dans les querelles littéraires qui remplirent l'époque la plus ancienne de la poésie courtoise, le poète gascon [Marcabru] avait nettement pris position contre les chanteurs de l'amour courtois, la *troba n'Eblo*. Se plaçant au point de vue moral, il les rendait responsables de la dépravation des moeurs contemporains, eux qui entraînent par leurs chansons tout le monde, hommes et femmes, à une conception de l'amour trop facile et pernicieuse. Ernest Hoepffner, *Romania* LIII (1927), p. 30.

The theory of the existence of the two schools stems, I think, from questionable interpretations of references made to Eblo by Marcabru and Bernard de Ventadour. It is the interpretation of these references that have made Eblo the head of a school of poetry,—that of the idealists.[6] Unfortunately, no poems of his have survived to test the validity of the theory, though we do know that he was a poet of distinction.[7] It was to him, too, that Cercamon dedicated his *planh* on the death of Guillaume X in 1137,[8] and the *envoi* of Bernart Marti may have been dedicated to the same Eblo.[9] In his famous poem contrasting true and pure love with false and impure love, Marcabru concludes with these lines:

> Ja non farai mai plevina
> Ieu per la troba n'Eblo,
> Que sentenssa follatina
> Manten encontra razo.[10]

He gives his reason why he will never follow that senseless style: because *Amors* and *Amars* can never be reconciled. Whoever attacks pure love, slanders and defames it:

> Qu'ieu dis e dic e dirai
> Quez amors et amars brai,
> Hoc,
> E qui blasm' Amor buzina.[11]

It is quite plain that it is the *troba n'Eblo* which upholds the type of love which has but the semblance of love and which is a scourge, the source of ruin to those who cultivate it:

> Amars lo sieu disciplina
> E'l met en perdicio.[12]

It is equally plain that Marcabru upholds true love, *bon' Amors*;

> Qui bon' Amor a vezina
> E viu de sa liurazo,
> Honors e Valors l'aclina
> E Pretz sens nuill' ochaio.[13]

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[6] De ces divers textes il est permis de conclure, comme on l'a fait, que le seigneur Eble faisait, de son temps même, figure de chef d'école et que cette école était celle des poètes courtois, des idéalistes, que Bernard de Ventadour représentera si brillamment, et contre laquelle Marcabru devait mener une si rude guerre. Alfred Jeanroy, *op. cit.*, p. 17.

[7] Ebolus . . . erat valde graciosus in cantilenis, qua de re apud Guillelmum, filium Guidonis, est assecutus maximam favorem. Cf. Camille Chabaneau, *Les Biographies des troubadours* (Toulouse, 1885), p. 8.

[8] Lo plainz es de bona razo
Qe Cercamonz tramet n'Eblo.
Les Poésies de Cercamon VI, 49-50, ed. Alfred Jeanroy (Paris, 1922), p. 22.

[9] N'Eblon man ves Margarida
Lo vers per un mesatgier.
Les Poésies de Bernart Marti, VII, 57-58, ed. Ernest Hoepffner (Paris, 1929), p. 26.

[10] Never shall I enlist myself in the style of Lord Eblo because he maintains a senseless opinion that is contrary to reason. XXXI, 73-76. *Poésies complètes du troubadour Marcabru*, ed. J. M. L. Dejeanne (Toulouse, 1909), p. 149.

[11] XXXI, 78-81, *ed. cit.*, p. 149. I say and I have said and I shall say that (pure) love and (false) love cry out against each other —yes—and he who attacks (pure) love defames it. Dejeanne translates 'buzina' by 'bousille'—to botch or bungle, *ed. cit.*, p. 150. I have adapted Appel's rendering: *Bernart von Ventadorn*, p. LXIII.

[12] (False) love is a scourge to its own and brings him to destruction. Marcabru, *ibid.*, 30-31, *ed. cit.*, p. 146.

[13] He who has excellent love as a neighbor and who lives of her gifts, Honor and

Bernard de Ventadour likewise declares that he will never belong to the school of Lord Eblo:

> Ja mais no serai chantaire
> ni de l'escola n'Eblo.[14]

Jeanroy interprets these lines as a declaration of discouragement on the part of the poet, the consciousness of a pupil's inability to equal the art of his master.[15] Appel prefers to see in them Bernard's exchange of a former master in the art of love for a better, truer one,—his beloved.[16] However, if we turn to the context of the poem, we find that the poet himself gives the reason. The subject matter of the poem is announced at the very outset: the poet's utter fidelity to one whom he desires and has desired, but of whom he has never had joy:

> c'ades es us mos talans.
> ades es us e no's muda,
> c'una'n volh e'n ai volguda,
> don anc non aic jauzimen.[17]

His beloved has made him play at a game of love in which he has twice the worse of it until she be of one accord with him,—until she returns his love:

> c'a tal joc m'a faih assire
> don ai lo peyor dos tans
> (c'aitals amors es perduda
> qu'es d'una part mantenguda),
> tro que fai acordamen.[18]

He himself is justly to blame for his loss and his grief because he has served his beloved to no avail. If she does not put an end to his passion, then it will only redouble. It is then that he utters his lament that he shall never be a troubadour, that he shall never belong to Eblo's school. Why?

> que mos chantars no val gaire
> ni mas voutas ni mei so;
> ni res qu'eu fassa ni dia,
> no conosc que pros me sia,
> ni no'i vei melhuramen.[19]

It is because his lady is inflexible in spite of his verses and the music he writes, it is because whatever he may say or do is of no use that he shall never succeed

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Worth and Merit control him without any doubt. Marcabru, *ibid.*, 64-67, *ed. cit.*, p. 148. Cf. Dejeanne's translation: rendent hommage, p. 151.

[14] Never shall I be a troubadour nor belong to Lord Eblo's school. Bernard de Ventadour, 30, 22-23, ed. Carl Appel, *Bernart von Ventadorn, seine Lieder* (Halle, 1915), p. 181.

[15] *Op. cit.*, p. 17.

[16] *Op. cit.*, p. XXXII.

[17] For, ever is my desire the same. Always it is one and does not change. Because I desire one and have desired her from whom never have I had pleasure. 30, 4-7, *ed. cit.*, p. 181.

[18] Because she has made me take part in such a game wherein I get twice the worse of it (for such a love is lost which is maintained one-sidedly), until she be of one mind with me. *Ibid.*, 10-14, *ed. cit.*, p. 181.

[19] Because my minstrelsy helps me not nor my trilling songs or melodies; nor do I recognize that anything that I may do or say is of avail to me, nor do I see there any improvement. *Ibid.*, 24-27, *ed. cit.*, pp. 181-182. Appel translates 'dia' by 'keinen Tag', p. 186, although he correctly enters 'dia' in his glossary as the first person, present subjunctive under 'dire', p. 362.

as a troubadour nor be of Eblo's school. The implication, surely, is that poetry and music, that speech and action are of avail to Eblo's following, that success crowns their efforts, that by such means they attain the object of their love and desire. Far from being a declaration of discouragement, of incompetence or even an exchange of masters, it is Bernard's acknowledgement of his own lack of success in his quest of his beloved and of the success of Eblo's school in attaining theirs.

If we join this suggestion of the characteristic of Eblo's school, namely, that it is marked by the success of its members in attaining the object of their desires, to Marcabru's castigation of that same school as senseless and irrational in upholding a love that is false and impure and fraught with danger and social ruin, then the conclusion seems to be that Eblo's school was concerned with and was successful in attaining the object of their loves and desires in the physical sense and their conception of love consisted in its fulfilment, that is, in the possession of the beloved. It was against this that Marcabru fought and it was of this that Bernard despaired. What was Marcabru's conception of love, then, of the *Amors* he champions? What was the conception of love, *bon' amors*, to which Bernard dedicates himself in spite of his lady's inflexibility?

> Ai, bon' amors encobida,
> . . . .
> totz tems vos ai dezirada,
> que res autra no m'agrada.
> autr' amor no volh nien![20]

Did there exist, in other words, at the beginning of troubadour poetry these two traditional schools distinguished esthetically, in their moral purpose and in a new type of love peculiar to the idealists as has been claimed? Or did Marcabru, the realist, and Bernard de Ventadour, the idealist, concur in their conception of love,—*fin' amors, bon amors*,—as against another school headed by Eblo whose conception of love differed radically from theirs?

It is this possibility that has prompted the following study on the conception of love among the first troubadours inclusive of Bernard de Ventadour. The analysis, based on the texts, reveals that from the very beginning, from Guillaume IX, there has existed among them a constant tradition and conception of pure love,—*fin' amors*. Far from differing in their idea of love, the so-called idealists and realists concurred in teaching and defending a conception of pure love of desire arising from the contemplation of the beauty of the beloved and effecting a union of the minds and hearts of the lovers. It was a love that yearned for and, at times, was rewarded by the solace of every delight of the beloved except the physical possession of her by intercourse. Far from being pure in the accepted sense, or disinterested, it is sensual and carnal in that it allows, approves and encourages the delights of kissing and embracing, the sight of the beloved's nudity and the touching and lying beside her nude body,—in short, in all that provokes and fans desire. For it is desire that is the essence of pure love. When possession puts an end to desire or, at least, weakens and lessens it, then pure love ceases to be and is replaced by mixed love if practiced by faithful lovers, or by false love if practiced by faithless lovers,—that is, by lust and sensuality practiced for their own sakes. Despite all the sensuality that such a love implies in our eyes, for the troubadours this love is pure, good and true,—*fina, bona, veraia*. It is spiritual in that it teaches the union of hearts and minds and not of bodies, and in its desire for and striving after ever closer union it ennobles him who loves to such an extent that it is the source of all good and all virtue. That is the only true love.

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[20] Ah! excellent love, fervently desired . . . always have I desired you, for nothing else pleases me. No other love do I desire at all. *Ibid.*, 50-56, *ed. cit.*, p. 183.

II.

Fin' Amors—The Pure Love of the Troubadours

First of all, a love that springs from lust, that consists in the physical possession of women for its own sake, is not love at all, but is false, a counterfeit of true love, practiced by the evil, the criminal and the debauched. It is Marcabru (*ca.* 1130-1148) who best exemplifies this teaching. It seemed to him that the greatest evil in the South of France of his day, the evil from which all other social ills derived, was the low estate to which love had fallen. Love had become common, promiscuous, venal and unrestrained. It had made strumpets of women, lechers of men; wives had become complacent, husbands deceivers of their own and others' wives. As a result, all that was good and noble, of worth and value had been brought to naught. All that was praiseworthy and meritorious in mankind had been debased. Evil reigned supreme and in its wake had come perversity, infidelity, cowardice, cupidity, niggardliness. As he laments and bewails, attacks and inveighs against these evils, he seems to recognize the futility of his words against this impure love:

> De nien sui chastiaire
> E de foudat sermonaire.[1]
>
> Re no'm val s'ieu los chasti,
> C'ades retornan aqui.[2]

Rather does he envisage the reputation that his poems will earn for him among posterity:

> E s'ieu cug anar castian
> La lor folhia, quier mon dan;
> Pueys s'es pauc prezat si'm n'azir,
> Semenan vau mos castiers
> De sobre'ls naturals rochiers
> Que no vey granar ni florir.[3]

This castigation of false love and lovers did win him that reputation. It appears in the form of the epitaph-like few lines of his false biography:

> Trobaire fo dels premiers qu'om se recort. De caitivetz vers e de caitivetz sirventes fez; e dis mal de las femnas e d'amor.[4]

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[1] Marcabru, V, 31-32, ed. J. M. L. Dejeanne, *Poésies complètes du troubadour Marcabru* (Toulouse, 1909), p. 20. In vain am I a censurer and a sermonizer of (their) madness. Cf. Dejeanne's translation: Je suis censeur du néant, sermonneur de folie, *ed. cit.*, p. 22.

[2] XVII, 37-38, *ed. cit.*, p. 73. It is of no use for me to reprimand them because they return there immediately.

[3] XLI, 25-30, *ed. cit.*, p. 202. And if I thought that I am going to correct their madness, I simply seek my own harm; since little is made of it if I grow angry over it, I go about sowing my reprimands on real rocks since I see there neither grain nor flowers sprouting.

[4] He was one of the first troubadours in the memory of man. He composed some worthless poems and *sirventes*; and he said evil of women and love. Cf. Camille Chabaneau, *Biographies des troubadours* (Toulouse, 1885), p. 9; also Dejeanne, *ed. cit.*, p. 2.

The accusation is hardly fair and not quite accurate, at least in what regards women and love. It is quite true, Marcabru did say harsh things of women but only of those whose evil life and conduct merited it,—perfidious, deceitful women of evil life, faithless and adulterous wives:

D'entre dompnas es fugida
Vergoigna e non sai cor.[5]

Mas de faus' amistat me clam,
Qu'anc pos la serps baisset lo ram
No foron tant enganairiz.[6]

Eyssamens son domnas trichans
E sabon trichar e mentir,
Per que fan los autrus enfans
Als maritz tener e noyrir;
. . . .
Ja Dieus no'l sia perdonans
Qui las vol onrar ni servir,
Estas putas ardens cremans
Pejors que ieu no'us saubra dir.[7]

It is true, too, he did say many harsh things of love, but of a love that was venal, inconstant, false, treacherous and promiscuous:

Veirai si puosc un vers faire
De fals' Amistat menuda,
C'aissi leu pren e refuda,
Puois sai ven e lai mercada,
. . . .
Cest' amors sap engan faire,
Ab engan ses aigua raire,
Puois, quand l'a ras, se remuda
E quier autrui cui saluda,
A cui es douss' e privada,
Tant que'l fols deven musaire.[8]

It is this false love that he characterises as *amars* and which he condemns:

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[5] XXXVI, 19-20, *ed. cit.*, p. 175. Shame has fled from amongst women and is not current here.

[6] VI, 6-8, *ed. cit.*, p. 24. But I lament over false love for never has there been so many deceitful women since the serpent drew down the branch.

[7] XXXIV, 22-32, *ed. cit.*, p. 166. Women, likewise, are tricksters and know how to cheat and lie; wherefore do they make their husbands maintain and support other men's children. May God never forgive him who wishes to honor and serve these passionate and impassioned whores who are worse than I can tell you. Cf. also V, 13-18, pp. 19-20; XII, 36-40, p. 50; XV, 27-30, p. 62; XLIV, *passim*, pp. 208-211. Many of the poet's diatribes against women are directed towards individual ladies whose deceit, arrogance and indifference he has personally experienced: Cf. VII, 17-24, pp. 28-29; XIV, 37-42, p. 58 or arise from the consciousness of his own base actions: cf. VIII, 32-50, pp. 33-34. Cf. also Carl Appel, 'Zu Marcarbru', *Zeischrift für romanische Philologie* XLIII (1923), pp. 433-434.

[8] V, 2-12, *ed. cit.*, p. 19. I will see if I can compose a poem on false, common love which breaks out as easily as it declines, and then sells itself here and bargains there . . . This sort of love knows how to deceive, trickily how to shave without water; then when it has shaven someone, off it goes and seeks another whom it greets, to whom it is charming and intimate with the result that the fool becomes a sot. Cf. Dejeanne's translation: la fausse amitié menue qui prend aussi facilement qu'elle refuse. Cf. also, VII, *passim*, pp. 28-30; XVIII, *passim*, pp. 77-83; XXXI, 33-36, p. 146.

Amars creis et atahina
Tric' ab coratje gloto
Per una dolssor conina
Que'is compren d'un fuoc fello.[9]

Qu'ieu sai s'Amars es amanssa,
Qu' a mains es fals' e tafura.[10]

On the other hand, Marcabru said many good things of love, of love that was true and good, pure and constant. That is the love that used to be[11] and which he teaches.[12] It is this love that he characterises as *fina*, *bona*, *veraia* or simply as *Amors* in contrast to *Amars*:

Aicel cui fin' Amors causitz
Viu letz, cortes e sapiens.[13]

Ai! fin' Amors, fons de bontat,
C'a[s] tot lo mon illuminat.[14]

Ja non creirai, qui que m'o jur,
Que vins non iesca de razim,
Et hom per Amor no meillur;
C'anc un pejurar non auzim.[15]

For all the attacks made upon it by false lovers, it is this love which endures and prevails:

Fals amic, amador tafur,
Baisson Amor e levo'l crim,
E no'us cuidetz c'Amors pejur,
C'atrestant val cum fetz al prim;
Totz temps fon de fina color,
Et ancse d'una semblansa;
Nuills hom non sap de sa valor
La fin ni la comensansa.[16]

The great difference in the effects of false love and true love appears in the contrast Marcabru makes between them:

Bon' Amors porta meizina
Per garir son compaigno,

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[9] XXXI, 19-22, *ed. cit.*, p. 145. (False) love thrives and disquiets, deceives with ravenous desire through a sensuous pleasure which is enkindled by a treacherous fire.

[10] XXXVII, 47-48, *ed. cit.*, p. 181. Because I know whether (false) love is amity which to many is false and perfidious.

[11] Cf. XVIII, 25, *ed. cit.*, p. 79.

[12] Cf. V, 49-50, *ed. cit.*, p. 21.

[13] XL, 8-9, *ed. cit.*, p. 196. The man whom pure love singles out lives happy, courteous and wise.

[14] *Ibid.*, 36-37, *ed. cit.*, p. 198. Ah! pure love, fount of goodness, through which the whole world is enlightened.

[15] XIII, 25-28, *ed. cit.*, p. 54. I shall never believe, whoever may swear so, that wine does not come from grapes, and that a man does not grow better through love for never have we heard of one growing worse. Cf. also, V, 37-40, p. 21; XIII, 6-8, p. 53; XV, 31-32, p. 63; XIX, 37-45, p. 91; XXXI, 64-67, p. 148; XXXII, 46-72, pp. 154-155; XXXVII, 31-36, p. 180; etc.

[16] XIII, 9-16, *ed. cit.*, p. 53. False sweethearts, perfidious lovers, depreciate Love and enhance crime. But do not think that Love worsens, for it has the same value as it had in the beginning; always has it been of pure hue and ever of one aspect. No man knows the beginning or the end of its worth.

Amars lo sieu disciplina
E'l met en perdicio.[17]

Those who confuse and equate false love with true love lie, even his fellow troubadours:

Trobador, ab sen d'enfanssa,
Movon als pros atahina,
E tornon en disciplina
So que veritatz autreia,
. . . .
E meton en un' eganssa
Falss' Amor encontra fina,
Qu'ieu dic que d'Amar s'aizina
Ab si mezesme guerreia;
. . . .
Per so'n port ir' e pesanssa
C'aug dir a la gen frairina
C'Amors engan' e trahina
Cellui cui Amars reneia;
Menton, que lor benananssa
Es Jois, Sofrirs e Mesura.[18]

Provided that the gift the lovers make to each other is not debased and demeaned, true love springs from the heart for it is a matter of mutual pledge and of self-promise:

Segon dich, faich e semblanssa,
Es de veraia corina
Car se promet e's plevina,
Ab sol que'l dos no sordeia,
E qui vas lieis no s'enanssa
Porta nom de follatura.[19]

Except by implication and negation, in those passages in which he attacks false love, Marcabru tells us very little of the characteristics of true love, of its qualities, in what it consists. Certainly it is not venal, wanton, vulgar and common; certainly it is not practiced by evil men and women;[20] certainly is not the love of faithless wives and husbands.[21] In the circumstances, one might be tempted to assume that *Amors* is equated with our idea of pure love, of platonic love,—that is of chaste love that is spiritual and disinterested, unconcerned with the carnal and sensual. As a matter of fact, most critics go further and identify *Amors* with the love of God. Thus, when Jeanroy speaks of Marcabru's exaltation of *bon' Amors* as praise of divine love,[22] he is but echoing Carl Appel's conclusion on the nature of *fin' Amors*,—that it is the love of God.[23] More recently, Guido Errante, in his study on the work of Marcabru, came to the same conclusion as had Wechssler for Courtly Love in general, namely, that *Amors* had its inspiration in and was patterned on the virtue of charity and Christian mysticism. Hence, when Marcabru contrasted *Amors* and *Amars*, he was but contrasting *charitas* and *cupiditas*.[24] Errante has shown quite clearly that Marcabru does speak of *Amors* in language that is mystical and Scriptural, but in language that is as applicable to the human love of the sexes as it is to the love of God. No one will deny that mysticism, whether Cluniac or otherwise, did influence the form and the language of the courtly lyric in general as well as those of the poems of Marcabru in particular. But as regards what Errante calls 'the ideological content of early troubadour poetry', there are fundamental differences between the troubadour conception of love and the love of God or charity that preclude the possibility of their identification or even of the influence of divine love on the origin or formation of that conception. These differences have been pointed out quite clearly by Etienne Gilson[25] and by the present author in a former article.[26] In truth, it is difficult to reconcile Marcabru's expressions concerning *fin' amors* with divine love: the love of God, for example, is hardly a matter of self-promise and pledge as *Amors* is;[27] nor is its birth confined to the well-born and its growth to a leafy bower protected from the cold and the heat;[28] nor, like *fin' amors*, does charity single out or reject an individual,[29] nor is it fearful to boast of its possession because of the possibility of loss thereby.[30] *Amors*, *fin' amors*, *bon' amors*, is neither *caritas*, platonic love, nor purely carnal love or lust. It is a special type of love peculiar to the troubadours by whom, as far as historical texts allow us to know, it was formed, developed and spread. It is the type of love which we call Courtly Love. Later, Andreas Capellanus will call it *amor purus*,[31] the font of goodness, a love of desire divorced entirely from physical possession of the beloved, practiced by people of worth and merit and regarded as ennobling and productive of every virtue and good.

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[17] XXXI, 28-31, *ed. cit.*, p. 146. Pure love provides healing to its partner; (false) love scourges its own and puts him in the way of perdition. Cf. also, *Ibid.*, 78-81, p. 149.

[18] XXXVII, 7-24, *ed. cit.*, pp. 178-179. With childish understanding, troubadours cause concern to people of worth and constrain what truth concedes . . . and they place on equal footing false love and pure love. But I say that he who draws near to (false) love wages war upon himself . . . Therefore am I sad and grieved when I hear my fellow troubadours say that (true) love deceives and betrays him who foreswears (false) love. They lie for their felicity is Joy, Patience and Moderation. May one see in the 'trobador, ab sens d'enfanssa' and 'la gent frairina' a reference to 'la troba n'Eblo'? Cf. also *supra* p. 140, and XXXVI, 13-18, *ed. cit.*, pp. 174-175 and Carl Appel, 'Zu Marcabru', pp. 449-450.

[19] XXXVII, 37-42, *ed. cit.*, p. 180. According to maxim, fact and appearances, provided that the gift is not debased, it (true love) springs from the very heart because it is a matter of mutual promise and pledge, and whoever does not draw near to it, bears the name of fool.

[20] Cf. XL, 15-35, *ed. cit.*, pp. 197-198.

[21] Cf. V, 19-28, *ed. cit.*, p. 20; VIII, 6-10, p. 32; XVII, 31-35, p. 73; etc.

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[22] Cf. *supra*, p. 139, n. 1.

[23] Hier ist kein Zweifel mehr was Fin' Amor bedeute. Jetzt handelt es sich nicht nur um keusche Liebe, im Gegensatz zu sündiger Brunst. Es handelt sich um keine irdische Liebe mehr. Fin' Amor ist zum Himmel aufgestiegen. Es ist die Liebe, die um Gott ist und mit ihm selber eins wird. 'Zu Marcabru', *Zeitschrift für romanische Philologie* XLIII (1923), p. 454. Cf. also D. Scheludko, 'Reliogiöse Elemente im weltlichen Liebeslied der Trobadors', *Zeitschrift für französische Sprache und Literatur* LX (1937), p. 34. Marcabrun identifizierte die hohe Liebe direkt mit der göttlichen Liebe.

[24] Cf. Edouard Wechssler, *Das Kulturproblem des Minnesangs*, I, (Halle, 1909), p. 216. Il quale non canta l'amor cortese: oppone invece cupiditas a charitas, inspirandosi, per l'idea, direttamente alle Scritture, e, per lo stile, alle Scritture e ai mistici suoi contemporanei. Guido Errante, *Sulla Lirica romanza delle Origini* (New York, 1943), p. 377. The same conclusion is repeated in 'Old Provencal Lyric Poetry, Latin and Arabic Influence', *Thought* XX (1945), p. 326: As for Marcabru, his texts hardly leave any doubts. His *amors* means caritas, and not platonic love, whereas his *amars* has a much wider significance than mere lust; and *ibid.*, p. 327: most of the critics no longer deny that Cluniac mysticism is the ideological content of early troubadour poetry. Errante's article in *Thought* is a reply to two reviews of his monograph on Marcabru: a rather devastating one by A. R. Nykl in *Troubadour Studies* (Cambridge, 1944), pp. 14-20 and a more sympathetic but nonetheless critical one by H. A. Hatzfeld in *Romanic Review* XXXV (1944), pp. 165-171. Unfortunately, the article is marred by the inaccuracies and distortions of the type that featured his previous work. (Cf. Nykl, *op. cit.*, pp. 19-20). For example, his statement, p. 306, 'According to Nykl himself there were no contacts between Spain and Southern France during the period 900-1031 A.D.', is in direct opposition to what Nykl was trying to show and actually says on pp. xxxiv-xxxvi of *The Dove's Neck-Ring* (Paris, 1931). Again, Errante has apparently missed entirely the point of my article 'An Inquiry into the Origins of Courtly Love', *Mediaeval Studies* VI (1944), pp. 175-260, if one may judge by the distortion of it that he presents in note 13, pp. 309-310. These inaccuracies and distortions are the more regrettable in that they give cause to hesitate in accepting and having confidence in the validity of the author's general work, his arguments and conclusions.

[25] *La Théologie mystique de saint Bernard* (Paris, 1934), appendice IV, pp. 193-215.

[26] *Mediaeval Studies* VI (1944), pp. 188-193.

[27] Cf. XXXVII, 39, *ed. cit.*, p. 180.

[28] Cf. V, 49-53, *ed. cit.*, p. 21.

[29] Cf. XL, 8-10, *ed. cit.*, p. 196.

[30] Cf. XIII, 30-32, *ed. cit.*, p. 54.

We may gain some idea of Marcabru's conception of *fin' amors* from two of his poems,—the so-called 'Starling' poems.[32] These have been considered imitations or parodies,[33] again, quite arbitrarily, as pieces of cynicism on the part of the author,[34] and as mockeries of the courtly lyric.[35] Just why these two poems should be thought cynical or mocking is not too clear. The strongest reason that might be advanced is that the ideas of love which the author presents in them are at variance with the critics' pre-conceived conception of *Amors* as divine love. On the contrary, those ideas entirely agree with the courtly conception of love as exemplified by Cercamon, Bernart Marti and Bernard de Ventadour. The content of the two poems is simply the accusation of infidelity made by a lover against his beloved whom he suspects of fickleness, his bitter uncertainty amid his doubts and suspicions, the denial of the lady in question, her reiteration of fidelity and her offer to seal and prove her love by its consummation. Certainly there is nothing that would argue derision or cynicism if the ideas the poems express be taken in conjunction with the views of Marcabru already set forth. The situation will become a commonplace in later courtly lyrics and the development of it has its sanction in the text-book of Courtly Love by Andreas Capellanus.

The poet's lady is the fairest of women and her love is pure, but she is at the same time inconstant.[36] He suspects that she has transferred her affections elsewhere, sends a messenger, a starling, to charge her with it, to assure her of his own constancy and to find out if he is still beloved of her. He charges the starling:

Vol' e vai
Tot dreit lai,
E'l retrai
Qu'ieu morrai
Si non sai
Consi jai
Nuda o vestia.[37]

He sends word to her, too, that he will forgive her her deceit and fickleness on condition that she accord him her favor,—a favor that is the ultimate in sexual relations.[38] The lady denies the accusation and reaffirms her pure love of the poet. To no other suitor is she pledged and therefore to no other has she given herself; she loves him alone purely:

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[31] *Andreae Capellani de Amore libri tres*, I, vi, H, ed. Amadeu Pagès (Castello de la Plana, 1930), pp. 105-106; translated, John Jay Parry *The Art of Courtly Love* (New York, 1941), p. 122.

[32] XXV and XXVI, ed. cit., pp. 121-129.

[33] Cf. Carl Appel, 'Zu Marcabru', *Zeitschrift für romanische Philologie* XLIII (1923), p. 435: Es handelt sich offenbar um eine Satire, oder besser wohl um eine Parodie, die Marcabru einer wenig gewählten Gesellschaft vorsetzt. Meine Vermutung, dass der Trobador damit die beiden Nachtigallenlieder Peire d'Alvernhes ' hat parodieren wollen (s. Deutsche Litteraturzeitung 1901, Nr. 47, Sp. 2969 f.) scheint mir noch jetzt alle Wahrscheinlichkeit für sich zu haben. It is generally accepted now that the opposite is true and that Peire d'Auvergne was imitating Marcabru.

[34] Cf. Ernest Hoepffner, 'Le Troubadour Bernard Marti', *Romania* LIII (1927), p. 127 and p. 146, n. 1.

[35] Cf. Guido Errante, *Sulla Lirica romanza delle Origini*, pp. 352-354.

[36] The poet describes her as adorned thus: *De fin' Amor dezirada*, but more inconstant and fickle than any other lady:

Az una flor pic vairada
Plus que d'autruna pauzada.

XXV, 67-69, *ed. cit.*, pp. 123-124: She has an inconstant, fickle flower set with desired pure love better than any other lady. Cf. also, 23-40, p. 122.

[37] XXV, 49-55, *ed. cit.*, p. 123. Fly and go directly to her and tell her that I shall die if I do not know how she lies abed, nude or dressed.

[38] *Ibid.*, 79-94, *ed. cit.*, p. 124.

> Az una part es partida
> Ma fin' amistatz plevida,
> Son joc revit, si'l m'envida.[39]

Furthermore, she promises to make an end to the discord that has arisen between them and that, if he will come to her, she will seal their love with intercourse.[40] The starling returns to announce the success of his mission to the poet and concludes:

> Vos ai amor de valensa.[41]

From the evidence of the poems, it is clear that Marcabru and the lady in question had practiced pure love,— *fin' amistatz plevida.* That pure love, it is inferred, comprised at least the sight of her abed, clothed or nude. Now that pure love pledged to him is to be translated into physical intercourse. But it still remains a love of worth, a power for virtue,—*amor de valensa.* This is exactly the situation later treated by Andreas Capellanus: the transition from the practice of pure love to mixed love.[42] Mixed love, though less preferred to pure love, is nevertheless not to be condemned, but it is praiseworthy and the source of all good things.[43]

* * * * *

Four of the lyrics of Guillaume IX (1071-1127), the first known troubadour, have been classed as courtly.[1] Jeanroy has pointed out the existence in them of the principal traits which will characterize the lyrics of succeeding troubadours.[2] He has indicated, too, that love is not conceived as platonic, but that Guillaume has expressed sensual desires very crudely, sometimes brutally.[3] In view of the fact that there is the implication that love was conceived later as platonic, it may be well to review Guillaume's conception of this love.

In the first poem of the courtly group (VII), he laments the fact that he has never had joy of love and confesses that, perhaps, he has never deserved more:

> Quar no n'ai ni petit ni re?
> Quar ben leu plus no m'en cove.[4]

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[39] XXVI, 45-47, *ed. cit.*, p. 127. My pure pledged love is directed in one direction. I will outdo his joy if he asks it of me. Cf. Dejeanne's translation: Ailleurs est portée ma pure amitié jurée. P. 129.

[40] Ibid., 60-66, *ed. cit.*, p. 128.

[41] *Ibid.* 70, p. 128. I bring to you a love of worth.

[42] Sed et, ubi aliqui fuerint diu puro amore coniuncti, postea vero mixto si placet amore gaudere, eadem in istis perdurat substantia amoris, licet modus et forma atque respectus sit varius amandi. *De Amore*, II, vi, *ed. cit.*, p. 153; Parry p. 164.

[43] Mixtus vero amor dicitur ille, qui omni carnis delectationi suum praestat effectum et in extremo Veneris opere terminatur . . . Hoc autem dico non quasi mixtum amorem damnare intendens sed ostendere cupiens, quis ex illis alteri sit praeferendus. Nam et mixtus amor verus est amor atque laudandus et cunctorum dicitur origo bonorum. *Ibid.*, I, vi, H, *ed. cit.*, p. 106; Parry, p. 122.

[1] Alfred Jeanroy, *Les Chansons de Guillaume IX, duc d'Aquitaine* (Paris, 1913), pp. vii-x. Cf. also, Friederich Diez, *Leben und Werke der Troubadours* (Leipzig, 1882), p. 6 ff.

[2] *Op. cit.*, p. xvii.

[3] *Ibid.*

[4] VII, 8-9, *ed. cit.*, p. 17. Why have I little or nothing from it? Because, very likely, more does not befit me.

The reason of his failure to enjoy the 'more' that love has to offer is that knowingly and willingly, perhaps, he has transgressed against the very virtues that the lover should have:

Qu'az esciens
Fas mantas res que'l cor me di:
"Tot est niens".[5]

Poem IX describes his love for the most perfect of creatures:

Mout jauzens me prenc en amar
Un joy don plus mi vuelh aizir.[6]

What is the 'plus' of love that in poem VII does not befit him and which in this poem he yearns for? Guillaume best answers that question in the next poem (X). Separated from his beloved, Bon Vezi, he is tortured by the uncertainty of her love for him. Memory of her evokes the favors he has received, her ring and a tangible proof of her love. He prays for a renewal of the latter:

Enquer me menbra d'un mati
Que nos fezem de guerra fi,
E que'm donet un don tan gran,
Sa drudari' e son anel:
Enquer me lais Dieus viure tan
C'aja mas manz soz so mantel![7]

Finally his beloved may test him and his love, he is wholly hers. He is hers because he cannot live without her embrace:

Que plus etz blanca qu'evori,
Per qu'ieu autra non azori.
Si'm breu non ai ajutori,
Cum ma bona dompna m'am,
Morrai, pel cap sanh Gregori,
Si no'm bayz' en cambr' o sotz ram.[8]

The expression of love that is a source of virtue and which is directed towards a being superior to him translates itself for Guillaume into a burning desire of a kiss, a touch of her,—exchanges of love between himself and his beloved in a tangible and physical way. That they are physical and sensual is implied in his reproach to her and of her behavior towards him:

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[5] *Ibid.*, 16-18. Knowingly, I do many things that my heart tells me: "All that is worthless". Cf. also, 25-36, *ed. cit.*, pp. 17-18.

[6] IX, 1-2, *ed. cit.*, p. 21. Much enraptured, I begin to love a joy to which I wish to draw closer.

[7] X, 19-24, *ed. cit.*, pp. 25-26. I still remember that morning when we put an end to dissension and that she gave me so great a gift, her love and her ring. May God let me yet live long enough that I may have my hands under her cloak.

[8] VIII, 13-18, *ed. cit.*, p. 20. For you are whiter than ivory; that is why I love none other. If shortly I do not obtain help (to know) how my good lady loves me, I shall die, by the head of Saint Gregory, if she does not kiss me in-doors or under a green arbor.

> Par queus vulhatz metre monja.[9]

* * * * *

Like Marcabru, Cercamon (*ca.* 1135-45) attacked love, spoke harshly of it, but again only of false, wanton love that was deceitful and promiscuous. In the poem that is inspired by his beloved's betrayal of him,[1] he laments that the evil and the good share equally in love since wickedness has usurped the place of Youth. Consequently the lover is not loved nor has he joy of his love, husbands become galants, women are fickle and lovers deceive each other.[2] All these shall be punished. He concludes his strictures on false love with a prayer that he may find refuge in his own true love:

> Saint Salvaire, fai m'albergan
> Lai el renh on mi donz estai,
> Ab la genzor, si q'en baizan
> Sien nostre coven verai
> Et qe'm do zo que m'a promes;
> Pueis al jorn s'en ira conques,
> Si be l'es mal al gelos brau.[3]

Cercamon begins the next poem of the collection with praise of 'aquest amor' which is the theme of his song: it is the source of Worth and Joy, of reward to those who serve it because in it are observed the proprieties and covenants of love.[4] It shuns the cowardly, the avaricious and the proud. Thus but a small number obey its mandates:

> Qu'en plus de mil no'n a dos tan verays
> Que fin' Amors los deja obezir.[5]

He castigates those troubadours who debase love and since he cannot correct them, he calls upon true lovers to separate themselves from such and to seek the counsel of God. As to his own love, he says:

> Qu'us joys d'amor me reverdis e'm pays,
> E puesc jurar qu'anc ta bella no fus:

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[9] *Ibid.*, 21. It appears to me that you wish to become a nun. Cf. also 25-26, *ed. cit.*, p. 21.

[1] IV and especially 38-42, *Les Poésies de Cercamon*, ed. Alfred Jeanroy (Paris, 1922), pp. 11-14.

[2] Stanzas 2, 3, 4, 6, *ed. cit.*, pp. 11-13.

[3] IV, 43-49, *ed. cit.*, pp. 13-14. Holy Saviour, grant that I may find a haven there where my lady dwells, with the fairest, so that in kissing each other our accord may come true and that she may give me what she has promised me. Then at day-break, she will depart overcome even though the savage jealous one bear it harshly. Jeanroy fails to translate 1. 48 and questions the sense of it in his notes, p. 33. J. M. L. Dejeanne also questions the meaning of the line and suggests the possibility of correcting 'conques' to 'con q'es' and translates: elle s'en ira telle qu'elle est actuellement; c-à-d. que notre accord consisterait uniquement en baisers et en promesses, bien que cela soit pénible au jaloux. He prefers, however, the reading given above. 'Le Troubadour Cercamon', *Les Annales du Midi XVII* (1905), p. 51, n. 48.

[4] V, 7-11, *ed. cit.*, p. 15.

[5] *Ibid.*, 17-18, *ed. cit.*, p. 15. For from among more than a thousand there are not two genuine enough that pure love hear them favorably.

Petit la vey, mas per ella suy gays
Et jauzions, e Dieus m'en do jauzir.[6]

Two of his poems make explicit the gift for which he prays.[7] In the first, he laments the sorrows and tribulations of an unrequited love, the pain of his frustrated desires:

Las! qu'ieu d'Amor non ai conquis
Mas cant lo trebalh e l'afans,
Ni res tant greu no's covertis
Com fai so qu'ieu vau deziran;
Ni tal enveya no'm fai res
Cum fai so qu'ieu non posc aver.[8]

The object of his love and desire is a beautiful and perfect lady:

Per una joja m'esbaudis
Fina, qu'anc re non amiey tan.[9]

The aim of his desires of this 'joja fina' he states unequivocally:

Dieu prejarai qu'ancar l'ades
O que la vej' anar jazer.[10]

Whether he be accorded his prayer or not, he will continue to serve her faithfully because

greu er cortes
Hom qui d'amor se desesper.[11]

The second poem relates the poet's sadness and grief at his separation from his beloved. He intimates that scandal-mongers have been the cause of it;[12] he bewails the credence he has placed in reports of her and his complaints at her infidelity.[13] In addition to her beauty, she is faithful, loyal, 'fina':

Ni om de leis non pot mal dir,
Tant es fin' et esmerada.[14]

She can make him happy still, rejoice him if she will but grant him that which will enrich him.[15] That gift which will rejoice him and revive him he describes explicitly in his instructions to the messenger he sends to her:

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[6] *Ibid.*, 39-42, *ed. cit.*, p. 17. Because a joy of love revives and delights me, and I can swear that never was there one so beautiful. I see her but seldom but because of her I am merry and joyous and may God grant that I may have pleasure of her.

[7] I, II, *ed. cit.*, pp. 1-7.

[8] I, 6-12, *ed. cit.*, p. 1. Alas, I have won but the pain and the labour of love; nothing is so grievously attained as is that which I keep desiring, nor does anything excite such longing as does that which I cannot have.

[9] *Ibid.*, 13-14, *ed. cit.*, p. 2. I am overjoyed because of a pure pearl of love for never have I loved anything so much.

[10] *Ibid.*, 23-24, *ed. cit.* p. 2. I shall pray God that I may yet touch her or that I may see her go to bed.

[11] *Ibid.*, 57-58, *ed. cit.* p. 4. Hardly will that man be courteous who gives way to despair in love.

[12] II, 10-11, *ed. cit.*, p. 5.

[13] *Ibid.*, 26-28, *ed. cit.*, p. 6.

[14] *Ibid.*, 20-21, *ed. cit.*, p. 5. Nor can anyone say evil of her so pure and spotless is she.

[15] *Ibid.*, 30-32, *ed. cit.*, p. 6.

Messatges, vai, si Deus ti guar,
E sapchas ab mi donz furmir,
Qu'eu non puesc lonjamen estar
De sai vius ni de lai guerir,
Si josta mi despoliada
Non la puesc baizar e tenir
Dins cambra encortinada.[16]

In a poem of doubtful attribution, the poet speaks of his love for a lady whose heart at first has failed to be touched and moved by his love and service:

Per fin' Amor m'esjauzira.[17]

He has not seen her nor heard from her since the day that she had said that she would love him if he loved her.[18] He feels that he will die of the resultant uncertainty:

Dieus! si poirai l'ora veder
Qu'eu puosca pres de lei jazer![19]

E si'm fezes tant de plazer
Que'm laisses pres de si jaser,
Ja d'aquest mal non morira.[20]

On the other hand, it is in her power to fulfill his every wish:

Toz mos talenz m'aemplira
Ma domna, sol d'un bais m'aizis.[21]

Wherever Cercamon bespeaks the desires that his *fin' Amors* arouses, whenever he qualifies the longings that his *joja fina* excites, they are carnal and sensual: to kiss her (VIII, 44); to touch her, the sight of her as she retires (I, 23-24); to lie beside her (VIII, 40-41, 54); to kiss and hold her nude body (II, 47-48): perhaps even intercourse (IV, 48).

* * * * *

Bernart Marti lived and wrote about the middle of the twelfth century[1] at a time when Marcabru was past his prime and when Bernard de Ventadour was in full maturity.[2] In spirit, idea and style he is closest to Marcabru and it is that troubadour whom he most closely follows even to the point of imitation.[3] Like

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[16] *Ibid.*, 43-49, *ed. cit.*, p. 7. Go, messenger, may God protect you, and contrive to communicate with my lady, for I cannot live here long nor there be healed (Jeanroy and Dejeanne 'durer'), if I cannot embrace and hold her nude to me within a tapestried room.

[17] VIII, 1, *ed. cit.*, p. 26. I shall rejoice because of a pure love.

[18] *Ibid.*, 31-32, *ed. cit.*, p. 28.

[19] *Ibid.*, 40-41, *ed. cit.*, p. 28. Goodness, if I might only see the hour when I might lie beside her.

[20] *Ibid.*, 53-55, *ed. cit.*, p. 29. And if she were to give me so much pleasure that she should allow me to lie close to her, certainly I should not die of that evil. Jeanroy translates: je ne mourrais pas du mal que je sens, p. 29; Dejeanne: du mal que j'ai, *op. cit.*, p. 37.

[21] *Ibid.*, 43-44, *ed. cit.*, p. 28. My lady would crown my every desire were she to grant me only a kiss.

[1] Cf. Ernest Hoepffner, 'Le Troubadour Bernart Marti', *Romania* LIII (1927), p. 112. Sa carrière poétique s'est donc déroulée aux alentours de 1150, un peu avant et un peu après cette date.

[2] *Ibid.*, p. 110.

[3] Cf. Hoepffner, *op. cit.*, especially pp. 127-130 and 138-143.

Marcabru. Bernart condemns the social ills of his day;[4] like Marcabru, Bernart was hostile to women and to love. But it is to be noted that those poems in which these latter traits are so apparent are directed towards false love and false lovers in general,[5] or against a vicious practice of certain lovers in particular.[6] Bernart makes quite plain that it is because of false love and madness that he is implicated in a love that was pure and true at first,[7] but which, at length, degenerated into a lying and deceitful passion:

Companho, per companhia
    De folor
Soi d'amor en gran error.
Laidament romp e deslia,
E'l jovens qu'en leis se fia
    Vai marritz
Pels amadors apostitz.[8]

It is not through cynicism that he enjoins deceived lovers to be deceitful in their turn and to take their good where and when they may,—just as he intends to do,—even of a lady covered with shame,[9] but because a false love can never exist without harlotry:

Greu er amor ses putia
    Camjairitz
Tro que'l mon(s) sia fenitz.[10]

Bernart is not at all condemning love in general as Hoepffner claims, but only false, deceitful love,—even as his model Marcabru had done.[11] Love is deceitful, lying, but only that love which is false. False love is again attacked in Poem III of the collection in which Bernart allows to a lady her husband and a courtly lover, but forbids her giving her favors to a third party. That is a law of Courtly Love, as he distinctly says, and his words are not an attempt at frivolity. If a lady gives herself to more than two, to someone else besides her lover and husband, she is disloyal and, in indulging in such practices, she lowers herself to the status of prostitute.[12] That theme had been treated of by both Marcabru and Cercamon[13] as had been that of husbands who make themselves betrayers and despoilers of other men's wives.

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[4] II, ed. Ernest Hoepffner, *Les Poésies de Bernart Marti* (Paris, 1929), pp. 4-8.

[5] IV, *ed. cit.*, pp. 11-14.

[6] III, *ed. cit.*, pp. 8-11.

[7] IV, 8-14, *ed. cit.*, p. 12.

[8] IV, 1-7, *ed. cit.*, pp. 11-12. Companions, because of fellowship in madness am I in error concerning love (Hoepffner: je me trouve dans un grand embarras au sujet de l'amour). Hideously does it break asunder and undo, and youth who trusts in it is distressed by apostatized lovers.

[9] *Ibid.*, 47-49, *ed. cit.*, p. 14.

[10] *Ibid.*, 40-42, *ed. cit.*, p. 13. Hardly will love exist without capricious harlotry until the end of the world. Hoepffner translates: Il est difficile qu'amour soit sans libertinage et sans tromperie. In his notes, he refers to Carl Appel's translation in which 'camjairitz' is made to modify 'putia', p. 48. Appel translates thus: Schwerlich wird Liebe, so lange die Welt steht, ohne wetterwendische Hurerei sein. *Bernart von Ventadorn, seine Lieder* (Halle, 1915), p. LXIII. I have adapted Appel's rendering.

[11] Cf. *supra*. pp. 144-145. Il est en effet très significatif de voir comme Bernart, en généralisant, applique à l'amour tout entier ce que disait Marcabru des putanes. *Romania*, p. 123. On the contrary, this is not a condemnation of love in general, but only of false love and that of a particular case in which he has been the victim. His reflexions arise from his own particular unfortunate experience. Cf. 1.8, *ed. cit.*, p. 12.

[12] III, 17-18, *ed. cit.*, p. 9.

[13] Mas cella qu'en pren dos ni tres
E per un non si vol fiar,
Ben deu sos pretz asordeiar,
E sa valors a chascun mes.

Marcabru XV, 27-29, *ed. cit.*, p. 62. Cf. also Cercamon IV, 36-37, *ed. cit.*, p. 13. Appel is of the opinion that Marcabru means by the 'un' of l. 28, to whom the lady may confide herself without fault, her

In other words, just as Marcabru had done before him, Bernart distinguished between the evil and the scourge of false love and the delight and ecstasy of true love with its bitter-sweet pangs of desire.[14] Far from being cynical, a misogynist, Bernart states that he is and has been a lover:

> Anc mos cors ni mos cossiriers
> D'amor non fo vencutz ni las,
> Que d'als non es mos cors entiers,
> Ni autre tresaur non amas,
> Ni autre ricor non deman.[15]
>
> Si ai amor encobida
> E mes tot mon cossirier
> Que ja no vuelh a ma vida,
> Mon grat, far autre mestier,
> Qu'anc, pus nasquey de ma maire,
> No volgui autr' obra faire
> Ni d'autre labor no viu.[16]

Moreover, his has been a pure, loyal love directed towards one who is herself pure and excellent:

> Lonc eslei
> Fis d'amor segura.
>
> Cui m'autrei
> Tant es fin' e pura.[17]

Thus, he is certain of the reward that he will have of her:

> Non es tant trefana.
> Pero ges ieu no'm n'esmai
> Del ben que'm n'avenha.
> Gen baizan m'estrena
> De que m'asenhora.[18]

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husband and not a lover. In this he contrasts his position to that of Bernart Marti: Aber dieser eine, den die Frau in Treue lieben soll, ist für Marcabru nicht der *drut*, wie für Bernart Marti, sondern der Gatte. (*Bernart von Ventadorn*, p. LXVI). Hoepffner agrees (*Romania*, pp. 126-127). But the whole context of Marcabru's poem, praise of moderation and courtesy, makes clear that it is not the husband but the lover. The 'un', and likewise the 'dos' and 'tres', refers if anything to 'savis hom' of l. 25. Moreover, Courtly Love allows the lady a husband and lover. It is a law of that system that love cannot exist between husband and wife and thus both are forced to seek extra-marital love in order to advance in worth: Sed quum sciam, inter virum et uxorem posse nullatenus esse amorem, Campaniae hoc comitissae sententia roborante, et in hac vita nullum posse fieri bonum, nisi illud ex amore originis sumpserit incrementa, non immerito extra nuptialia mihi foedera postulare cogor amorem. (*De Amore, ed. cit.*, p. 99; Parry, p. 116. Cf. also *ibid.*, pp. 82-83, Parry 89: 100-101, Parry, p. 106). But if the lady be promiscuous and accept two or more lovers, then she lowers herself to the status of prostitute. She must be loyal and faithful to but one.

[14] Cf. I, 37-40, *ed. cit.*, p. 3.

[15] VIII, 8-12, *ed. cit.*, p. 27. Never have my heart and mind been overcome or made weary with love, for by nothing else is my heart complete nor other treasure do I hoard nor ask for any other wealth.

[16] VII, 8-14, *ed. cit.*, p. 23. So much have I desired love and have put all my mind (in attaining it), that never voluntarily, whilst I live, do I wish to ply any other trade. Because, never since I was born, have I wished to follow any other work nor do I exist by any other occupation.

[17] I, 46-49, *ed. cit.*, p. 3. I have given long proof of unerring love. So excellent and pure is she to whom I yield myself.

[18] I, 41-45, *ed. cit.*, p. 3. She is not that false. Yet I am not at all worried concerning the good which may come to me from her. In sweetly kissing me, she makes me a present of that which ennobles me. Cf. Hoepffner: ce qui fait mon bonheur. Cf. also note 45, *ed. cit.*, pp. 41-42 and 55-63, p. 4.

In that poem in which he upbraids the deceit of her who is disloyal and promiscuous of her favors, Bernart speaks of his 'na Dezirada' from whom he is separated and whose love, at least by implication, ennobles him. He would be blest of God were she nearby. Then he indicates the sensual joy that he has of her when they are together:

> Tant m'es grail' e grass' e plana
> Sotz la camiza ransana,
> Quan la vei,
> Fe que'us dei,
> Ges no tenc envei' al rei
> Ni a comte tan ni quant,
> C'asatz fauc meils mon talant,
> Quan l'ai despoillada
> Sotz cortin' obrada.[19]

In those poems in which Bernart strikes the personal note of his love (VII, VIII, IX),[20] we find what he desires of love and of his lady. It is not too different from the desires expressed by Guillaume and Cercamon. He and his beloved have exchanged pledges of fidelity. He is her faithful lover:

> Tant li suy fizels amaire
> Ses falhir, so'us jur e'us pliu.[21]

She has forgotten him for a year and he prays God to protect her that she be not won over by another or that another displace him in her affections. Then Bernart tells us what he seeks of his beloved:

> S'illa'm fai'n breu cossentida
> D'aquo dont ai dezirier,
> Qu'ieu la bays nud' o vestida,
> Ja autra ricor non quier.
> Assatz val mais qu'emperaire,
> Si desotz son mantel vayre
> Josta son belh cors m'aiziu.[22]

In the second poem, the poet yearns to win his beloved before the jealous and evil-mongers separate them and destroy their love. A moment near her would seem an eternity of delight:

> Molt estaria volontiers
> Lonc lo seu cors dolgat e gras,
> Don duraria l'anz entiers,
> Si m'en tornav' eneuslopas.[23]

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[19] III, 37-45, *ed. cit.*, p. 10. She seems so svelte and plump and sleek under her linen chemise, that when I see her, by my faith, I do not bear the least envy to the king or to any count because I do so much better my pleasure when I have her naked beneath the figured veil.

[20] *Ed. cit.*, pp. 23-32.

[21] VII, 20-21, *ed. cit.*, p. 24. Without faltering, so faithful a lover am I to her; that I swear and pledge to you.

[22] *VII*, 29-35, *ed. cit.*, p. 24. If, shortly, she grants to me what I desire,—that I embrace her nude or clothed,—then I seek no other riches. Of much more worth am I than an emperor, if I draw close beside her fair body beneath her minever cloak.

[23] VIII, 22-28, *ed. cit.*, p. 28. Very gladly would I stay alongside her slender and plump body; were I to turn away from

That is what he desires more than anything in this world. No matter how much others try to supplant him in her affections, they will not succeed. He sends his messenger to his lady to assure her of his fidelity because

> Qe en dormen e en veillan,
> Qant si desvest dal seu mantel
> M'est vis qe mos cors s'i sejorn.[24]

In the third poem, Bernart proclaims that he has chosen the best lady in the world, one who will not be influenced by evil-mongers and from whose love will flow worth and merit.[25] When he is with her, there is no emperor who may procure more of worth or who has purer love:

> Qan sui nutz e son repaire
> E sos costatz tenc e mazan,
> Ieu no sai null emperador,
> Vas me puesca gran pres cuillir
> Ne de fin' amor aver mais.[26]

It belongs to *fin' amors* for the nude lover to hold and caress his beloved. He will fly from this world of deceit and slander with his faithful lady. She is ready and willing to grant her love and to suffer the attacks of the evil and the envious. With her he will become a hermit. There with her he will live and die.[27]

Bernart carries on the tradition and doctrine of pure love. As a faithful and pure lover, his desire and yearnings are to see and to hold his nude beloved (III, 44); to kiss her clothed or unclothed, to be enfolded beneath her cloak (VII, 31-35); to lie beside her (VIII, 22-25) and naked to fondle and caress her (IX, 17-18). These desires on his part do not constitute a tendency towards realism on his part any more than such like desires make realists of Cercamon, Bernard de Ventadour, nor are they simply 'volupté cérébrale', unless they are arbitrarily interpreted so. They do show, however, that he was in the tradition of that doctrine of pure love which allows to the lover any carnal solace short of the consummation of his love. Nowhere is the latter suggested except in those poems in which false love and false lovers are attacked.

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When dealing with Jaufré Rudel, it is almost impossible not to become entangled in the controversy concerning the meaning of his *amors de terra lonhdana*. Even though this article is concerned primarily with that love as an instance of *fin' amors* and not with interpretation, much less with identification of that love, it is difficult once one has begun to analyze Rudel's poems not to take sides. The identification of the person or object to which his *amour lointain*

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her immediately, still it would seem an entire year. Cf. Hoepffner: Le sens de ce passage peu clair me paraît être celui-ci: 'Le désir du poète d'être auprès de sa dame est tel qu'une absence, si courte qu'elle fût, lui semblerait durer toute une année, et d'autre part, auprès d'elle une année ne lui paraîtrait durer qu'un jour'. It would seem rather that the meaning intended by the poet is that he would enjoy a year's delight in a single instant beside his lady.

[24] VIII, 54-56, *ed. cit.*, p. 29. Whether I am asleep or awake, when she divests herself of her cloak, it seems to me that my heart resides with her.

[25] IX, 1-12, *ed. cit.*, p. 30.

[26] IX, 17-21, *ed. cit.*, p. 31. When I am naked in her dwelling and I hold and caress her flanks, I know of no emperor who, in comparison to me, may acquire greater worth or have more of pure love.

[27] IX, 31-42, *ed. cit.*, pp. 31-32.

is directed dates from shortly after the poet's death and has continued down to the immediate present. His false biography, based largely on the data supplied by his poems, identified the object of his love as a fictitious Countess of Tripoli.[1] Lacking historical information on the details of the poet's life and career, and basing their theories on the text of the poems,—just as his biographer had done,—modern scholars have identified the lady in question variously according as they set what they have learned from the texts against the historical, social and cultural background of Jaufré Rudel's day. Thus for Monaci, she is Eleanor of Aquitaine,[2] for Appel the Blessed Virgin,[3] for Vossler Helen of Troy,[4] for Jeanroy now a human being, now a divine one,[5] for Grace Frank the Holy Land 'here personified, or represented figuratively, as love of a far-away mistress'.[6]

From those opposed to such identifications and to such methods of textual criticism, this has earned for the above mentioned scholars and for those who have followed the methods of traditional criticism the epithets of philologists, positivists, adherents of the biographical method, etc., in all their pejorative connotations. Turning sharply away from such subjective methods, Mario Casella, and following him Leo Spitzer, base their interpretation on a conception of poetry as lyrical intuitions of pictures emanating from the natural love of ourselves and on their conception of art as the purely intellectual fruit of operative intelligence.[7] A poem is simply a personal history of an individual living an interior life in the midst of surroundings that condition it,—the traditions in which he lived and wrote.[8] Thus the spirituality of the poet must be viewed in his historical surroundings.[9] That spirituality is illumined and fed by ideas of his age which the poet assimilates to himself and transforms into his own proper thoughts. Therefore, the task of the critic is to pierce beyond the veil of words and metaphors that constitute the outward form of the poem to sieze upon the central idea which activates the poet and informs his work.[10] As a result, the poem has no objective reality; it is purely spiritual and must be interpreted as such.[11]

The *principe moteur* for Casella derives from Platonic-Augustinian philosophy. Jaufré was inspired by the moral and concrete realism of Christian mediaevalism. The philosophic and aesthetic current to which he had necessarily to subscribe was the Augustinian current.[12] *Amors de terra lonhdana* has no objective reality but is the concrete expression of *naturalis dilectio* according to the teaching of St. Augustine,—the universal principle and innate inclination of nature in its quest for a happy life, the metaphysical conception of love as an immanent and vital activity deriving from the intuition of one's *esse* as good and pure and the striving towards the absolute truth and goodness with which one feels indissolubly bound.[13] Likewise the object of that love, the lady, has no objective existence but is in reality the form of one's own *esse*:

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[1] *Les Chansons de Jaufré Rudel*, ed. Alfred Jeanroy (2nd ed., Paris, 1924), p. 21.

[2] Cf. E. Monaci, 'Ancora di Jaufré Rudel', *Rendiconti della Reale Acc. dei Lincei*, serie V, 2 (1893), pp. 927 ff.

[3] Cf. Carl Appel, 'Wiederum zu Jaufré Rudel', *Archiv* CVII (1901), pp. 338-349.

[4] Cf. Karl Vossler, *Sitzungsberichte der Kais. Akademie der Wissenschaften, Philos.-philol. Klasse* (1918), pp. 133 ff.

[5] Cf. Alfred Jeanroy, *ed. cit.*, pp. iv-vi.

[6] Cf. Grace Frank, 'The Distant Love of Jaufré Rudel', *Modern Language Notes* LVII (1942), pp. 528-529.

[7] Cf. Mario Casella, 'Poesia e Storia. I Il più antico Trovatore', *Archivio Storico Italiano* XCVI (1938), p. 61.

[8] Cf. Mario Casella, *ibid.*, pp. 29, 54.

[9] Le philologue qui se récuse de reconnaître la transcendance supra-individuelle de l'oeuvre poétique s'oppose à la volonté expresse du poète; c'est lui qui, en créant une oeuvre, a créé une mythologie, *sa* mythologie, sa légende, cette parcelle du *Geist* de son époque, de son pays et du *Geist* universel qui plane au-dessus de lui et de la contingence de son être. Refuser à Jaufré Rudel cette participation à l'universel c'est lui refuser *son* sujet. La méconnaissance de cette participation mène à l'incompréhension de l'oeuvre. Leo Spitzer, *L'amour lo[i]ntain de Jaufré Rudel et le sens de la poésie des troubadours*, University of North Carolina Studies in the Romance Languages and Literature V (Chapel Hill, 1944), p. 37. Cerchiamo di stabilire cio che egli dice e nel modo particolare e insostituibile come egli lo dice, secundo il pensiero che vive nelle parole di cui si è servito, e che erano perfettamente intelligibili a lui, cosi come erano intelligibili a coloro qui vivevano insieme con lui nella stessa tradizione di cultura. Mario Casella, *ibid.*, p. 12.

[10] Il faut lire ces poésies en tâchant de s'imprégner de leur atmosphère intime, de leur *inward form*, en suivant le fil des mots et des métaphores jusqu'au centre intérieur qui les a produits—c'est à dire en pénétrant du dehors au dedans, de l'écorce jusqu'à la moelle, en remontant des manifestations extérieures jusqu'au principe moteur. Leo Spitzer, *op. cit.*, p. 39.

[11] Cf. Mario Casella, *art. cit.*, p. 44.

> L'oggetto verso il quale si volge ansiosamente il cuore del poeta, è quell' altro se stesso che emana da lui ed è presente in lui . . . cio che il poeta ama, secondo l'essere intenzionale di conoscenza, è la forma del proprio essere.[14]

The lady is simply *un' immagine: una visualizzazione intensiva, una somiglianza . . . del suo stesso amore.*[15]

More recently, Leo Spitzer, basing himself generally on Casella's researches and methods, interpreted Jaufré's *amour lointain* as an instance of a phenomenon which he calls *paradoxe amoureux* that is at the base of all troubadour poetry:

> amour qui ne veut posséder, mais jouir de cet état de non-possession, amour-*Minne* contenant aussi bien le désir sensuel de "toucher" à la femme vraiment "femme" que le chaste éloignement, amour chrétien transposé sur le plan séculier, qui veut "have *and* have not".[16]

In the *a priori* method of criticism the critic must fix upon what he feels is the predominant philosophical trend in which the poet lived and wrote and then interpret his poetry in the light of it. In the case of Jaufré Rudel, and of Guillaume IX too, Casella says that that current is Platonic-Augustinianism. But an equally good case might be made, if one were so minded, for an interpretation based on the teaching that the soul of man is divine. It was this doctrine that was common to the philosophical and heterodox mystical thought current in the South of France and which converged there from the late tenth to the early twelfth century,—Neo-Platonism, Albigensianism, Arabic Neo-Platonism and Arabic mysticism. One might, without too much wrenching and torturing of texts, interpret Jaufré Rudel's *amors de terra lonhdana* as the innate desire of the soul, the divine in man, to rise to the perfection to which it aspires and which its union with the material body prevents,—the beatitude of repatriation and assimilation into the First Principle.[17]

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[12] Cf. Mario Casella, 'Poesia e Storia. II Jaufre Rudel', *Archivio Storico Italiano* XCVI (1938), p. 190.

[13] L'amore di terra lontana è dunque l'inclinazione innata o disposizione radicale di una natura singolare, chiusa in se stessa e completa in se stessa: essenza individuata e terminate . . . Essa natura individuata detiene e delimita in se quell' idea di felicità che Dio le ha data a titolo de bene. Questo bene essa lo dispiega spiritualmente dentro in se, invista di quella particolare belleza che la innamora; e che, innamorandola, la mette in movimento, mentre ne acuisce il desiderio di approprarselo, quel bene, totalmente et stabilmente. Mario Casella, 'Poesia e Storia. II, pp. 184-185. Cf. also his synthesis of the thought content which informs Rudel's poetry, *ibid.*, pp. 184-186.

[14] *Ibid.*, p. 161.

[15] *Ibid.*, p. 160.

[16] *Op. cit.*, pp. 1-2. Cf. the severe review by A. R. Nykl, *Speculum* XX (1945), pp. 252-258. The proximate occasion of Spitzer's study seems to have been Grace Frank's article 'The Distant Love of Jaufré Rudel', *Modern Language Notes* LVII (1942), pp. 528-534. In it he takes exception not only to the interpretation there contained but also to Mrs. Frank's approach to the subject, the methods employed, to what he feels are errors of commission and omission etc. Grace Frank restated her position both as regards interpretation, her conception of a proper approach to mediaeval literature in a second article 'Jaufré Rudel, Casella and Spitzer', *Modern Language Notes* LXIX (1944), pp. 526-531. She takes the occasion to correct and 'comment on certain misconceptions in S's pamphlet' with which it is replete, note 7, pp. 531-532.

Moreover, once the philosophic tradition has been selected or established by the critic, the *a priori* method in its extreme form, such as is exemplified in Casella, superimposes its understanding of that current of thought in which the author lived and wrote upon the poem itself. It forces into the mold of a doctrine of philosophy willy-nilly the words and metaphors that go to make up the poem which has no objective meaning. If, perchance, the poem does not fit into the mold and thus cause its spiritual meaning to emerge, then the tendency is to make it do so because the lyric thoughts expressed by the poet must have their counterpart, their mirror so to speak, in that tradition or that philosophy. Thence result often exaggerations, difficulties and even absurdities.[18] If there is a philosophical doctrine that informs a lyric, then it should not be necessary to torture the text word by word and line by line. On the contrary, it should radiate through the fabric and texture of the poem and be readily perceptible at least to those who are familiar with the doctrine on which it is based. If Rudel was so steeped in Platonic-Augustinianism and if that system of thought was so familiar to his age and to those for whom he wrote, it is strange that it escaped Rudel's biographer and it is equally strange that Andreas Capellanus did not recognize it in Courtly Love in general. After all, Andreas was much closer to the age of the troubadours than we are and had much better channels of information on the ideas and ideals of Courtly Love than we have,—for example, Marie de Champagne.

Again, the philological or traditional method of criticism is concerned primarily with what the author says. Therefore its first concern is with a correct text.[19] On the other hand, the *a priori* method is concerned with what the critic says the author is trying to say. Therefore there is not liable to be the same care to adhere to the text word for word but a tendency to allow oneself some latitude especially when it is a question of fitting a word or phrase into a philosophical text or idea. Thence results false readings, capricious emendations, paraphrases such as have been pointed out in the case of Casella and admitted by his disciple.[20]

It is hardly possible that these extremes of critical methods will ever meet, but it is well to recognize that both of them have a great deal to offer each other,—an exact text and a familiarity not only with the historical, social, economic and cultural background of the age of the troubadours, but also with the philosophical thought and religious doctrines which formed their mentality and shaped their minds and the mentality and minds of those for whom they wrote. For understanding, appreciating and even for interpreting Jaufré Rudel's poetry and Courtly Love, a combination of both methods is much to be preferred to the inflexibility of the one:

> Certainly one must understand medieval philosophy before trying to interpret medieval literature. Certainly one must seek to apperceive the essence of a poem before discussing

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[17] Cf. A. J. Denomy, 'An Inquiry into the Origins of Courtly Love', *Mediaeval Studies* VI (1944), pp. 193-260 and especially pp. 257-259.

[18] Cf. Grace Frank, 'Jaufré Rudel, Casella and Spitzer', pp. 529, 532 and Leo Spitzer, *op. cit.*, n. 9, p. 47.

[19] To sum up: there is no need to *umkehren*, least of all in the manner suggested. The point of departure for an interpretation must always be the nearest correct text, as found in the manuscripts, and based on the poet's usual attitude and vocabulary; not a capriciously emended text. A. R. Nykl, *Speculum* XX (1945), p. 258.

[20] Cf. A. J. Denomy, *art. cit.*, n. 5, p. 260; Spitzer, *op. cit.*, n. 34, pp. 59-63.

> external factors that may have accounted for it. . . . Accordingly we believe that for its complete comprehension *every* approach is valid, and that if we would master its fullest significance, we must accept the contributions of all sincere scholars and humanists, of historians as well as metaphysicians, of archivists as well as esthetes.[21]

There is one poem that is significant, I think, for understanding Jaufré's conception of love, -*Bels m'es l'estius*. It contains his confession of his transgression against true love and his conversion from sensual, false love to *fin' amors*. The kernel of the poem is the mishap that overtook the poet when discovered and attacked in the act of satisfying his desires with his beloved.[22] The shame, the discomfiture, the sneers that resulted weighed and preyed upon him. That has passed now and as far as he is concerned never will he return to such a way of life:

Lonc temps ai estat en dolor
Et de tot mon afar marritz, . . .
Mas aras vey e pes e sen
Que passat ai aquelh turmen,
E non hi vuelh tornar ja mays.[23]

It was his haste for self-indulgence that has been the cause of his fall and madness:

Qu'eras say ben az escien
Que selh es savis qui aten
E selh es fols qui trop s'irays.[24]

He thanks those whose good counsel he has followed. In obeying them, he has recovered that joy of heart that is a source of honor in their eyes. May they find their recompense in his recovery (22-28). Restored to joy and worth, never will he seek elsewhere than in true love for them, certainly not in the possessions of others:

Er ai ieu joy e suy jauzitz
E restauratz en ma valor,
E non iray jamai alhor
Ni non querrai autrui conquistz.[25]

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[21] Grace Frank, 'Jaufré Rudel, Casella and Spitzer', pp. 530-531.

[22] Because it does not seem to admit of a spiritual interpretation, Casella dismisses this rather realistic biographical but important mishap: Il fatto in se non importa. (Cf. *op. cit.*, p. 176). Spitzer accepts it as a personal anecdote that illustrates a well known commonplace among troubadours,—that they prefer to lie abed clothed with their beloved than to do so nude. Yet this anecdote to his mind does clarify the poet's thought: le troubadour semble en déduire qu'il aurait été plus sage dans cette occurrence de se coucher habillé, au lieu de vouloir avoir tous ses aises—ainsi est-il plus sage de ne pas demander tous ses aises en amour, de ne convoiter que 'ce mariage blanc' que nous connaissons par le roman de Tristan (*op. cit.* note 41, p. 72). This is, therefore, but another case of the *paradoxe amoureux*.

[23] IV, 15-21, *Les Chansons de Jaufré Rudel*, ed. Alfred Jeanroy, (2nd ed., Paris, 1924), p. 10. I have been grieved for a long time and sorrowed through and through . . . but now I see and think and perceive that I have outstripped that anguish and never do I wish to return to it.

[24] 12-14, *ed. cit.*, p. 10. For now I know assuredly that he is wise who defers and he is mad who is too precipitate. Cf. Spitzer, *op. cit.*, p. 10.

[25] 8-11, *ed. cit.* pp. 9-10. Now I have joy and am rejoiced and restored in my worth and I shall never go elsewhere nor shall I seek the conquests of others.

His worth is enhanced now. It was through the enemies of true love that he fell. But no matter how far he deviated from the path of true love, he was able to return to it because it never deceives nor fails those who cultivate it:

> Mas per so m'en sui encharzitz,
> Ja no'n creyrai lauzenjador,
> Qu'anc no fuy tan lunhatz d'amor
> Qu'er no'n sia sals e gueritz.
> Plus savis hom de mi mespren,
> Per qu'ieu sai ben az escien
> Qu'anc fin' amors home non trays.[26]

He is troubled and amazed that what true love, *fraire*, forbids him, false love, *seror*, allows and authorizes. Apparently no man is so wise—after the manner of ordinary human wisdom—that he does not go astray on some point or other. He has seen wiser than he deceived (cf. l. 33):

> Mais d'una re soi en error
> E'n estai mos cors esbaïtz
> Que tot can lo fraire'm desditz
> Aug autrejar a la seror;
> E nulhs hom non a tan de sen,
> Que puesc' aver cominalmen,
> Que ves calque part non biais.[27]

It is this lesson learned from experience,—the worth of *fin' amors* and its supremacy over its counterpart, sensual and false love,—that he leaves to troubadours in particular that they may spread that truth abroad, and to all men in general that they may unburden themselves of the foolish encumbrance of sensuality as he has done:

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[26] 29-35, *ed. cit.*, p. 11. But because I have risen in worth because of it (true love), I shall never believe those who speak evil of it, for never have I strayed so far from love that I be not now safe and healed (of my straying). A wiser man than I makes a mistake, wherefore I know certainly indeed that never does pure love betray a man. Nykl corrects *escharzitz* of the manuscript to *esclarzitz* and understands l. 32 to refer to l. 30 rather than to l. 31: I would translate: "But through this (experience) my mind has become clear; I shall not believe the meddlers in this matter any longer, because I had never been brought so far away from (true) love, that now J should not be fully cured of meddlers' (intrigues), *Speculum* XX (1945), p. 258 Jeanroy's translation understands *amor* of l. 31 as *amour coupable* (*ed. cit.*, p. 11) Spitzer, I think, seizes upon the meaning the poet was trying to convey: le poète veut dire qu'il ne s'est jamais tant éloigné de son vrai amour (idéal) qu'il n'eût maintenant plus de possibilité de retour. *Op. cit.* note 14, p. 48.

[27] 43-49, *ed. cit.*, pp. 11-12. But I am dumbfounded at one thing and stand before it, my heart amazed: that all that the brother forbids me, I hear that the sister authorizes; and no man has such wisdom,—such as a man ordinarily can have,—that he does not go astray in some direction. The *fraire-seror* enigma has called forth some interesting solutions (cf. Casella, *op. cit.*, p. 178, n. 29). Casella understands by *fraire* concupiscence or carnal love, by *seror* true love which presupposes knowledge (*ibid.*, p. 179). Spitzer has shown the absurdity of the solution and proposes what appears to be a more likely one: c'est le véritable amour qui de par sa nature, ne doit pas octroyer, c'est le mauvais principe (la soeur) qui devrait céder . . . Il ne faut pas prendre 'frère' et 'soeur' trop au sérieux . . . 'le frère' et 'la soeur' seront tout simplement des paraphrases pour 'l'un-l'autre'. (*op. cit.*, note 41, p. 72). To my mind, *fraire* denotes *fin' amors*, *seror* its opposite, false love. Just as *fraire* and *seror* are members of the same family, so true love and false love are of the same genus; just as the masculine member of the family is considered the nobler, of more worth than the feminine, so true love is nobler, of more worth than false love. Was Jaufré thinking here of Adam and the weaker vessel, Eve? Nykl takes a more realistic position and holds fast to the literal text: The sister, a married lady, was quite willing to listen to the poet's amorous advances (and this was what seduced him), whereas the brother was opposed to it. One night when the poet was visiting the sister, the brother sent some henchmen to give him a good trouncing and thus humiliated him (*loc. cit.*, p. 258).

> Adoncs vuelh mos chans si' auzitz,
> Et aprendetz lo, chantador!
> E sapchatz tug cominalmen
> Qu'ie'm tenc per ric e per manen
> Car soi descargatz de fol fais.[28]

The poem *Pro ai del chan essenhadors* clarifies somewhat Jaufré's idea of pure love.[28a] There he states his conviction that true love is the source of his greatest happiness:

> Don nulhs deportz no'm pot jauzir
> Tan cum solatz d'amor valen.[29]

An analysis of the poem brings to light some points of the poet's conception of *bon' amors, amors valens.* It centres about his separation from his beloved, a married lady living in her castle with her husband. His desire of her is pure, from the bottom of his heart:

> Aitant n'ay fin talan corau.[30]

The poet grieves at his separation from his beloved (ll. 23-24). The lady knows of his love and of its nature, that it is pure and true:

> Ves l'amor qu'ins el cor m'enclau
> Ai bon talan e bon albir,
> E say qu'ilh n'a bon escien.[31]

Unfortunately, she does not return his love but he hopes through patience to win her (ll. 38-40). But alas! jealous ones will prevent the fulfilment of their joy:

> Ma voluntatz s'en vai lo cors,
> La nueit et dia esclarzitz,
> Laintz per talant de socors;
> Mas tart mi ve e tart mi ditz:
> "Amicx, fa s'elha, gilos brau
> An comensat tal batestau

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[28] 52-52, *ed. cit.*, p. 12. Therefore do I wish that my song be heard; and learn it, you troubadours. Let all of you know generally that I consider myself wealthy and fortunate because I am relieved of a foolish burden.

[28a] Spitzer sees in this poem the germ of the *amor de lonh* motif: si *amor de lonh* se trouve dans II et V, si l'idée du lointain est impliquée par VI, je n'ai pas le droit d'écarter *luenh es lo castelh* de III—d'autant plus que le 'château lointain', la demeure géographiquement éloignée de la bien-aimée, peut avoir été un des germes du motif: *luenh es lo castelh* > *amor de terra lonhdana* > *amor de lonh*, ce seraient trois étapes possibles (je ne veux pas affirmer la succession chronologique des trois *poésies* qui contiennent ces expressions!) de la gestation intérieure dans l'âme du poète. (*Op. cit.*, p. 29).

[29] III, 7-8, *ed. cit.*, p. 6. For no entertainment can rejoice me as much as the solace of a noble love.

[30] 22, *ed. cit.*, p. 7. So much have I a pure, sincere desire of her.

[31] 30-32, *ed. cit.*, p. 7. In regard to the love which she encloses within my heart, I have pure yearning and true consideration and I know that she has clear knowledge of it.

Que sera greus a departir,
Tro qu'abdui en siam jauzen.[32]

He makes clear the desires that his *bon' amors* evokes, the fulfilment of which will assuage his sorrow and bring him joy: to have his beloved by him, to kiss her:

Per so m'en creis plus ma dolors
Car non ai lieis en luecs aizitz,
Que tan no fau sospirs e plors
Qu'us sols baizars per escaritz
Lo cors no'm tengues san e sau.
Bona es l'amors e molt pro vau,
E d'aquest mal mi pot guerir
Ses gart de metge sapien.[33]

Jaufré Rudel's *amour lointain* is an expression of *fin' amors, bon' amors.* Its object is a fair lady (II, 17-19; V, 31-32). It matters little whether she be real, fictitious, the fancied embodiment of the perfection of womanhood, she is unattainable; his is a love of desire not of possession:

Ben sai c'anc de lei no'm jauzi,
Ni ja de mi no's jauzira,
Ni per son amic no'm tenra
Ni coven no'm fara de si.[34]

The very fact that she is unattainable is the source of the increase of his longings:

Pus totz jorns m'en falh aizina,
No'm meravilh s'ieu n'aflam.[35]

His yearning and craving for her is the source of his joy and happiness:

Ver ditz qui m'apella lechay
Ni deziron d'amor de lonh,
Car nulhs autres joys tan no'm play
Cum jauzimens d'amor de lonh.[36]

Poignant though that desire be, he is not to be pitied at its unfulfilment for it is an anguish healed by the very joy of desire:

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[32] 41-48, *ed. cit.*, p. 8. By night and by clear day my desire goes quickly therein (where she is) through longing for succor; but by and by it returns and by and by it tells me: Beloved, she says, the evil jealous ones have begun such opposition as will be difficult to quell to such a degree that we may both be enraptured.

[33] 49-56, *ed. cit.*, pp. 8-9. Wherefore the more does my grief increase because I have her not in suitable places; for a sigh or a tear does not do as much as a single solitary kiss to keep my heart whole and safe. Pure is that love and great is its worth and it can heal me of this ill without the attention of a wise physician.

[34] VI, 25-28, *ed. cit.*, p. 17. I know that I have never had joy of her and that she has never had joy of me, nor will she look upon me as her lover or make an agreement with me about herself. Cf. also V, 47-49, *ed. cit.*, p. 15 and VI, 7-12, p. 16.

[35] II, 15-16, *ed. cit.*, p. 4. Since every day occasion (to see her) is lacking to me, I am not surprised that I thirst for her.

[36] V, 43-46, *ed. cit.*, p. 15. The one who calls me greedy and avid of distant love speaks the truth for no other joy so pleases me as does the joy of distant love. Cf. also VI, 11, p. 16.

Que pus es ponhens qu'espina
La dolors que ab joy sana;
Don ja non vuelh qu'om m'en planha.[37]

His desire and yearnings can only be appeased by the presence of his beloved:

Amors de terra lonhdana,
Per vos totz lo cors mi dol;
E no'n puesc trobar mezina
Si non al vostre reclam
Ab atraich d'amor doussana
Dinz vergier o sotz cortina
Ab dezirada companha.[38]

All he longs for is her presence,—to see her, to speak to her:

Be'm parra joys quan li querray,
Per amor Dieu, l'alberc de lonh;
E, s'a lieys platz, alberguarai
Pres de lieys, si be'm suy de lonh:
Adonc parra'l parlamens fis
Quan drutz lonhdas et tan vezis
Qu'ab bels digz jauzira solatz.[39]

His prayer is that some day that desire may be fulfilled:

Dieus que fetz tot quant ve ni vai
E formet sest' amor de lonh
Mi don poder, que cor ieu n'ai,
Qu'ieu veya sest' amor de lonh,
Verayamen, en tals aizis,

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[37] II, 26-28, *ed. cit.*, p. 5. For the pain is keener than thorn which is assuaged by joy; therefore, I never wish anyone to pity me. Cf. also VI, 13-15, p. 16.

[38] II, 8-14, *ed. cit.*, p. 4. Love from a distant land, for you my whole heart aches; and I cannot find remedy for it, if not, at your entreaty, by the charm of delicious love within orchard or below curtains (within and without) with my desired companion. For the variant readings of l. 11, cf. Alfred Jeanroy, *ed. cit.*, p. 25. I have adapted Nykl's and Lommatsch's reading as preferrable to Jeanroy's *au*—I hear; (cf. Nykl, *Speculum* XX (1945), p. 256). Stimming's and Bartsch's reading *si non vau al seu reclam* makes for the same sense as the above translation. The remedy in question is the assuaging of the pangs of desire, not through possession of the beloved (a thing he fears l. 25), but through the mere presence of the beloved. Grace Frank sees in this passage a contrast between the poet's desire of the Holy Land and desire for a woman of flesh and blood: the poet tells us that his love of a distant land makes him sad and that he can find no cure for his sadness if, because of the attraction of a more human passion (ab atraich d'amor doussana), he fails to heed this love (si non au vostre reclam). In other words, his soul will not be saved if desire for a woman of flesh and blood prevent him going to the Holy Land. ('The Distant Love of Jaufré Rudel', *Modern Language Notes* LVII (1942), p. 529). Cf. Spitzer, *op. cit.*, p. 4.

[30] V, 15-21, *ed. cit.*, pp. 13-14. Joy will shine forth indeed, when, through the love of God, I ask of her shelter that is afar (from me). And if it please her, I shall lodge near her, though I be afar. Then will appear the refined discourse when a distant lover, yet so close, will enjoy solace with fair words. Jeanroy translates *alberc de lonh* as *hôte lointain* as does Casella; cf. Spitzer's objection and his rendition of the passage: il demande 'une auberge de lointain', une auberge faite de lointain (et de rêve) il sera (18) près de la dame tout en étant 'loin' (*op. cit.*, p. 18). It is rather difficult to rèconcile this shelter made of dreams with the direct '*li querrai*' and the *parlamens* in which he means to indulge.

Si que la cambra e'l jardis
Me resembles tos temps palatz.[40]

His fear is that his will may deceive him, that his cupidity, his sensuality may take her from him by possessing her:

E cre que volers m'enguana
Si cobezeza la'm tol.[41]

Jaufré Rudel's idea of love consists in the contemplation of the mind of the perfections of his beloved, and in the desires to which contemplation gives rise. It is disinterested insofar as the poet has no expectation of possessing his beloved; he even fears that possibility. It is devoid of the sensual elements and aspirations that appear in the *fin' amors* of Marcabru, Cercamon, Bernart Marti, even in the *bon' amors* and *fin' amors* he has expressed. It is, nevertheless, a species of it in its insistence on love of desire as a source of joy and as the well and spring of worth.

* * * * *

Bernard de Ventadour echoes Jaufré Rudel's *amour lointain* in a poem, *Bel m'es qu'eu chan en aquel mes*, in which he laments his unrequited love for a lady merciless and hard of heart. Through love and desire of her, nevertheless, he increases in worth:

El mon non es mas una res
per qu'eu joya pogues aver;
e d'aquela no'n aurai ges,
ni d'autra no'n posc ges voler.
pero si ai per leis valor e sen,
e'n sui plus gai e'n tenc mo cors plus gen,
car s'ilh no fos, ja no m'en meir' en plai![1]

All he asks of his beloved is that she know of his love, how purely he loves her:

tot l'aur del mon e tot l'argen
i volgr' aver dat, s'eu l'agues,
sol que ma domns conogues
aissi com eu l'am finamen.[2]

or at least, that she accept him as her servant, whatever be the reward:

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[40] V, 36-42, *ed. cit.*, p. 15. May God who made all that comes and goes and formed this love from afar give me the power, for I long for it, that I may see this love from afar, truly, in such abodes that the room and garden may seem every day a palace to me.

[41] II, 24-25, *ed. cit.*, p. 5. And I believe that my will plays me false if cupidity takes her away from me.

[1] 10, 43-49, ed. *Carl Appel, Bernart von Ventadorn, seine Lieder* (Halle, 1915), p. 63-64. There is only one thing in the world whereby I may have joy and of it I shall never have any, nor can I wish for it of another. Yet, through her have I worth and character, and because of her I am more joyous, and because of her I take better care of my body for if she did not exist, I should not take any interest in it.

[2] 31, 37-40, *ed. cit.*, p. 190. I would wish to have given all the gold in the world and all the silver, if I had it, provided that my lady should know how purely I love her.

Bona domna, re no'us deman
mas que'm prendatz per servidor,
qu'e'us servirai com bo senhor,
cossi que del gazardo m'an.[3]

Or, realizing his presumption in seeking the love of so elevated a lady, he casts himself entirely on her mercy, making no claim of her whatever:

En son plazer sia,
qu'eu sui en sa merce.
si'lh platz, que m'aucia,
qu'eu no m'en clam de re![4]

In the poem *Chantars no pot gaire valer* he defines *fin' amors* and defends it against those who in ignorance and folly equate it with venal love:

En agradar et en voler
es l'amors de dos fis amans.
nula res no i pot pro tener,
si'lh voluntatz non es egaus.[5]

Fin' amors consists in the unity of wills and in the desire to please mutually. That unity of wills is indicated on the part of the beloved by the *bels semblans*, the indication that the lover's love is acceptable to the beloved and the sign that he may hope for reward, something tangible to satisfy the yearning of his heart, and the pledge which her promise affords:

Mout ai be mes mo bon esper,
cant cela'm mostra bels semblans
qu'eu plus dezir e volh vezer,
francha, doussa, fin' e leiaus.[6]

He would die were it not for the hope of reward that the *bels semblans* engenders:

Domna, res no vos pot dire
lo bo cor ni'l fin talan
qu'e'us ai, car be m'o cossire,
c'anc re mais non amei tant.
tost m'agran mort li sospire,
domna, passat a un an,
no'm fos per un bel semblan,
don si doblan mei dezire.[7]

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[3] 31, 49-52, *ed. cit.*, p. 191. Good lady, I ask nothing of you except that you take me as your servant, for I shall serve you as I would a good lord, however I may fare as regards reward. Cf. also 35, 13-16, p. 200.

[4] 25, 57-60, *ed. cit.* pp. 147-148. May it be according to her pleasure for I am at her mercy. If it pleases her, let her kill me for I make no claim on her of anything.

[5] 15, 29-32, *ed. cit.*, p. 86. The love of two pure lovers consists in desire and in mutual pleasing. In it nothing can be worth while unless their will be equal. Cf. also 40, 60-64, p. 227:

feiram chambis dels esperitz!
azautz sens m'i fora cobitz,
c'adonc saubr' eu lo vostr' afar
e vos lo meu, tot par a par,
e foram de dos cors unitz.

[6] 15, 36-39, *ed. cit.*, p. 87. I fixed firmly my full expectation (in her) when she let me see her friendly looks, she whom I desire most and wish to see, noble, charming, pure and true.

[7] 4, 49-56, *ed. cit.*, p. 24. Lady, I cannot tell you, when I reflect upon it, the true

What the reward may be, Bernard indicates in two poems: *Lancan vei per mei la landa* and *Lonc tems a qu'eu no chantei mai*. In the first, he tells us that his lady, haughty and hard of heart, after giving him *bel semblan* (l. 18) will not reply to his pleas. He casts himself on her mercy to do with him as she wills, prays God to soften her heart, reminds her that she would do wrong were she not to carry out the promise she gave him:

> Mal o fara, si no'm manda
> venir lai on se despolha,
> qu'eu sia per sa comanda
> pres del leih, josta l'esponda,
> e'lh traga'ls sotlars be chaussans,
> a genolhs et umilians,
> si'lh platz que sos pes me tenda.[8]

In the second poem, he expresses his joy that the lady he desires more than anyone else longs for him too (l. 9). Her love of him is *fina* (l. 66). The knowledge of that fact is ample reward for what he has suffered (ll. 14-18). He knows she loves him because of the *bel semblan* she gives him when she can or when the opportunity presents itself (ll. 28-31). He pictures the joy that it promises:

> Lo cors a fresc, sotil e gai,
> et anc no'n vi tan avinen.
> pretz e beutat, valor e sen
> a plus qu'eu no vos sai dire.
> res de be no'n es a dire,
> ab sol c'aya tant d'ardit
> c'una noih lai o's despolha,
> me mezes, en loc aizit,
> e'm fezes del bratz latz al col.
>
> Si no'm aizis lai on ilh jai,
> si qu'eu remir son bel cors gen,
> doncs, per que m'a faih de nien?
> ai las! com mor de dezire![9]

If we examine those poems especially wherein Bernard speaks of his love as *fin' amors*, *fin' amistatz*, or of himself as *fis amans*, *fis amics* and of his lady as *fina* or as his *fin joi*, we see very clearly that the desires awakened by his love are anything but disinterested. On the contrary, they are quite precise in their direction towards carnal and sensual delights of his beloved. In the poem *Ara no vei luzir solelh*, after expressing his joy at his lady's promise to love him (l. 18), he makes bold to describe his desires:

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feelings (of my heart) and the pure desire that I have for you, for never have I loved anything so much. My sighs, my lady, would have soon killed me, a year ago, were it not for the fair semblance whereby my desires redouble. Cf. also 36, 52-54, p. 208.

[8] 26, 29-35, *ed. cit.*, p. 152. She would do wrong were she not to bid me come there where she undresses in order that I might be at her service near her bed, beside the bedstead, and that on my knees and humbly I might draw off her well-fitting shoes if she deigns to stretch out her feet to me.

[9] 27, 37-49, *ed. cit.*, p. 159. She is lithe, slender and lively in body and never have I seen such a pleasing one. She has more of merit and beauty, worth and wisdom than I can tell you. Nothing but good is there to say of her provided that, some night, she be courageous enough to bring me there where she undresses, in some fitting spot, and make of her arms a noose about my neck. If she does not take me there where she lies that I may gaze upon her comely fair body, then why has she raised me up from nothing. Alas, how I die of desire!

Ja ma domna no's meravelh
si'lh quer que'm do s'amor ni'm bai.
contra la foudat qu'eu retrai,
fara i genta meravelha
s'ilh ja m'acola ni'm baya.[10]

And this is *fin' amors*:

Fin' Amor, ab vos m'aparelh;
pero no's cove ni s'eschai,
mas car per vostra merce'us plai
(Deus cuit que m'o aparelha!),
c'aitan fin' amors m'eschaya.[11]

In the poem *Bel m'es can en vei la brolha* the poet pleads the patience of his *cor fi* (l. 35) in the face of a love from which he has no profit or gain, and he pledges his fidelity in the hope that his patience will prevail in his quest for a reward. This is the reward:

Bo son tuih li mal que'm dona;
mas per Deu li quer un do:
que ma bocha, que jeona,
d'un douz baizar dejeo.[12]

In another poem, *Lancan folhon bosc e jarric*, Bernard celebrates the ennobling power of love. He expresses his joy that he is accepted as *fin amic* by his lady (ll. 12-13). Her love is *fina*, constant and pure (l. 29). From her he begs this reward:

Midons prec, no'm lais per chastic
ni per gelos folatura,
que no'm sent' entre sos bratz.[13]

Bernard has loved a lady since they were children (ll. 25-26). Now he complains and laments that love and his lady who has betrayed him (ll. 9-16). Though he has been constant and faithful in his love of her, she is impervious to his pleas and indifferent to his love. In his grief and sorrow, he exclaims:

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[10] 7, 41-45, ed. cit., p. 43. Let my lady never wonder if I seek that she give me her love or that she kiss me. In the face of such madness (i.e. of his quest) of which I speak, she would do a handsome marvel if she were to embrace and kiss me. Appel notes that Zingarelli understands this strophe differently: Diese Strophe versteht Zingarelli wesentlich anders: Ormai non si meravigli la donna mia se contro questa specie di matti le chiedo che mi dia l'amor suo baciandomi; assai ne saranno turbati (*fara l'en gran m.*) se mi abbraccia e mi bacia. *Foudat* n v. 43 bezieht Z. also auf die in den früheren Strophen gescholtenen *savai*. Der Ausdruck wäre aber viel zu schwach für deren Verruchtheit. Vielmehr ist *foudat* die Torheit, welche der Dichter eben mit seiner Bitte ausgesprochen hat. Umsomehr aber kann die Dame Wunderbares tun, indem sie ein so törichtes Verlangen erfüllt. *Op. cit.*, p. 46.

[11] *Ibid.*, 49-53, *ed. cit.*, p. 43. Pure love, I associate myself with you; yet it is not fitting nor becomng except that it pleases you in your mercy (God, I think, is the One who grants it to me) that such pure love befall me. Cf. also *si'm te fin' amors conhd' e gai* 11, p. 41.

[12] 9, 25-28, *ed. cit.*, p. 56. All the hurts that she gave me are dear to me, but in God's name, one gift I seek of her: that she may break the fast of my mouth that is fasting.

[13] 24, 33-35, *ed. cit.*, p. 141. I pray my lady that she may not fail me that I do not feel myself in her arms through reproof or because of an envious fool.

Las! e viure que'm val,
s'eu no vei a jornal
mo fi joi natural
en leih, sotz fenestral
cors blanc tot atretal
com la neus a nadal,
si c'amdui cominal
mezuressem egal?![14]

He chides her that as yet his love has not been rewarded:

Be for' oimais sazos,
bela domna e pros,
que'm fos datz a rescos
en baizan guizardos,
si ja per als no fos,
mas car sui enveyos.[15]

Separation from his beloved is the cause of his pain and sorrow. The fairest lady loves him and no opportunity presents itself for him to come to her:

Amors, e que'm farai?
si guerrai ja ab te?
ara cuit qu'e'n morrai
del dezirer que'm ve,
si'lh bela lai on jai
no m'aizis pres de se,
qu'eu la manei e bai
et estrenha vas me
so cors blanc, gras e le.[16]

Whether God grant him his desires or not, he will be patient (ll. 37-45). He, her *fin amant* (l. 47), prays mercy of his beloved and commends himself to her as her liege man (ll. 46-51).

He is loved by a lady, *Bel Vezer*, who hears his words and his pleas. He loves her purely:

qu'ins en mo cor
li port amor tan fin' e natural
que tuih son faus vas me li plus leyal.[17]

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[14] 28, 33-40, *ed. cit.*, p. 167. Alas, what does it avail me to live if I do not ever see my pure, true love abed under the casement window, her body as white as the snow at Christmas time, so that both of us in like measure may lie side by side. On the meaning of *mezurar* Appel notes: Dasjenige, was man messen will, legt man gern lang vor sich hin. Sieht der Dichter also sich und die Geliebte nebeneinander liegen? Auf die Gleichheit des Masses kommt es dann freilich nicht an, sondern nur auf die Gleichartigkeit der Stellung. Schwerlich wird an "sich miteinander messen" (im Liebesspiel) zu denken sein. *Op. cit.*, p. 170. n. 40.

[15] 28, 49-54, *ed. cit.*, p. 168. Would that it were time now, fair and excellent lady, that in kissing my reward were given me in secret, even if it were for no other reason than that I am desirous of it.

[16] 36, 28-36, *ed. cit.*, pp. 206-207. Love, what shall I do? Shall I ever grow well through you? I think I shall die shortly from the longing that comes upon me, if the fair one does not welcome me by her side there where she lies, so that I may fondle and kiss her and strain to me her white, plump, sleek body.

[17] 41, 14-16, *ed. cit.*, p. 235. For within my heart I bear her such pure and genuine love that in comparison to me all the most faithful are false.

He begs her to heal the wounds he has received at the hands of a false, merciless lady:

> domna, per cui chan e demor,
> per la bocha'm feretz al cor
> d'un doutz baizar de fin' amor coral,
> que'm torn en joi e'm get d'ira mortal![18]

Again, the blind force of love has made him a vassal of his lady, yet she will neither consent to see him nor receive his message. He is acting foolishly in pursuing so haughty a lady, but in spite of that, he is her liege man and to her he renders his pledge of service until of her mercy she grants him his desires:

> Mas mas jonchas li venh a so plazer,
> e ja no'm volh mais d'a sos pes mover,
> tro per merce'm meta lai o's despolha.[19]

Such are the desires to which his *fin' amors* gives rise and these are the gifts he asks of his beloved whom he loves so purely,—to assist his lady to undress (26, 30), to be present when she undresses (42, 42; 27, 43-45), to feel her arms about his neck, to look at her fair body as she lies abed (27, 42-48). He asks that he might lie beside her (28, 40), a kiss (28, 52; 41, 31), an embrace (7, 45; 9, 28), to lie in her arms (24, 35), to see her abed and to strain her to him (28, 34-40), to fondle and kiss her and to draw her fair svelte body to him (36, 34-36).

There is no reason either, to think that he means anything else when he begs his lady to be more gracious to him, or when he assures himself that when an opportunity presents itself, he will be rewarded with further favors. In a frenzy of love, he tells us that his beloved has given him her love and a kiss, his lady who is *douss' e fin' e pura* (l. 33). He beseeches her to do more for him:

> be conosc que mos pretz melhura
> per la vostra bon' aventura;
> e car vos plac que'm fezetz tan d'onor
> lo jorn que'm detz en baizan vostr' amor,
> del plus, si'us platz, prendetz esgardamen![20]

Likewise, he is easy and light of heart through the *fin' amors* (ll. 5-6) of a lady who is cruel and haughty towards him. He will not be discouraged in his quest because he knows that she is *tan pur' e tan fina* (l. 18), that mercy will prevail. In the joy of his desires, he asks himself:

> gardatz: s'ela'm fos vezina,
> s'eu n'agra re mais?—

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[18] *Ibid.*, 29-32, *ed. cit.*, p. 236. Lady, through whom I sing and make merry, strike me to the heart through my mouth with a kiss of pure, sincere love of such a kind as may translate me into joy and cast me from deadly sadness.

[19] 42, 40-42, *ed. cit.*, p. 243. But with clasped hands I come to her (to do her) pleasure and never do I wish to move from her feet until, through her kindness, she places me there where she disrobes.

[20] 13, 14-18, *ed. cit.*, p. 76. Well I know that my worth improves through your good destiny (i.e., through the good that comes to me from you; cf. Appel, *ed. cit.*, p. 79, n. 15); and since it pleased you to favor me so much the day that you gave me your love as you kissed me, take thought, please, of what is greater.

eu oc, c'aissi m'o aurai,
s'a lei platz que'm retenha.[21]

In the poem *Ges de chantar mo'm pren talans* Bernard condemns the indifference towards love, towards worth and merit that he finds about him. This indifference appeared first among the nobler classes. The poet, however, is a *fis amans* (l. 17, cf. also l. 44) of a love that is the source of all good, virtue and worth. Therefore does he praise his lady and tells of the favors he has received and of those he hopes to receive further from her:

De midons me lau cent aitans
qu'eu no sai dire; et ai be drei,
que, can pot, me fai bels semblans
e sona me gent et suau;
e mandet me (per qu'eu m'esjau)
que por paor remania
car ela plus no'm fazia,
per qu'eu n'estau en bon esper.[22]

Separated from his beloved who with a glance had ensnared his heart and enkindled his desires, he complains of the fact that *li fin amant* are not loved as they should be (ll. 21-24). Deceivers gain as much or more from love as does the *fis amaire* (ll. 27-30). He begs her to assuage his longings by a *bel semblan* (ll. 35-36). If it were not for evil-mongers, he would have her certain love. As it is

de solatz m'es umana
can locs es ni s'eschai,
per qu'eu sai c'a sotzmanna
n'aurai encara mai.[23]

I have been careful to limit the study of the qualities expressed by Bernard of his desires and the gifts he pleads for to those poems in which are specifically mentioned *fin' amors*, *fin' amistatz* or where he describes himself as a *fis amans* or his lady or her love as *fina*. It is not, therefore, a case of selecting purple passages indiscriminately for the sole purpose of illustrating the point in question. Were it not for that restriction, one might go further afield and cite poems and passages in which like desires are expressed, like gifts of love beseeched: I, 41-44; 39, 33-44. One might add, too, the realistic descriptions of the beloved that are apt to shock the sensibilities of the readers of so spiritual a poet as Bernard: 8, 33-40; 12, 16-18; 30, 50-54; 40, 29-31. Though *fin' amors* is not specifically mentioned in these poems, the love of which the poet writes has all the qualities and characteristics of the poems in which it is mentioned. And even in those poems in which his love is apparently disinterested, insofar as he asks for nothing of love and of his lady, his desires do turn to the tangible evidences of love. Thus, in speaking of his beloved, he says:

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[21] 18, 25-28, *ed. cit.*, p. 105. Look! If she were near me, would I have anything more? Yes, I would, for indeed I will have it, if she be pleased to keep me by her.

[22] 21, 33-40, *ed. cit.*, p. 120. I praise my lady a hundred times more than I can tell you; and I am indeed right for when she can, she shows me fair mien and speaks to me kindly and sweetly. And she has informed me (wherefore do I rejoice) that it was left undone through fear that she did not do more for me. Therefore, I am of good hope concerning it.

[23] 37, 45-48, *ed. cit.*, pp. 214-215. She is kind to me with her consolations when there is an opportunity or it is proper, wherefore I know that in secret I shall have still more.

> Tan am midons e la tenh car,
> et tan la dopt' e la reblan
> c'anc de me no'lh auzei parlar,
> ni re no'lh quer ni re no'lh man.[24]

Immediately he adds that she knows of his love and sufferings and when she can or pleases, she is kind to him:

> pero ilh sap mo mal e ma dolor,
> e can li plai, mi fai ben e onor.[25]

If he could only enchant his enemies that they become children and so not be able to do them harm:

> adoncs sai eu que vira la gensor
> e sos bels olhs e sa frescha color,
> e baizera'lh la bocha en totz sens,
> si que d'un mes i paregra lo sens.
>
> Be la volgra sola trobar,
> que dormis, o'n fezes semblan,
> per qu'e'lh embles un doutz baizar,
> pus no valh tan qu'eu lo'lh deman.
> Per Deu, domma, pauc esplecham d'amor!
> vai s'en lo tems, e perdem lo melhor![26]

Likewise does he ask for a kiss to heal the hurt and the sorrow of his longings and desires after he confesses that he demands nothing of his lady.[27]

Perhaps the best and clearest exposition of Bernard's *fin' amors* is given in the poem *Pois preyatz me, senhor.* It is a poem written when separated from his beloved and expresses his grief and sorrow at her absence, his sense of loss, his desires and cravings for her:

> so m'auci de dolor,
> car ochaizo non ai
> de soven venir lai.[28]

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[24] 39, 25-28, *ed. cit.*, p. 221. I love my lady so much and esteem her so dear, and so much do I fear and respect her that I have not dared to speak to her of myself, nor do I seek anything of her or send word to her for anything.

[25] *Ibid.*, 29-30, *ed. cit.*, p. 221. But she knows my suffering and my pain and, when it pleases her, she comforts and consoles me.

[26] *Ibid.*, 37-40, *ed. cit.*, p. 222. Then I know that I would see the fairest one, both her beautiful eyes and her fresh complexion, and I would kiss her mouth in all directions so that the mark of it would show there for a month. I would assuredly like to find her alone, sleeping or feigning to sleep, so that I might steal a secret kiss from her, since I am not sufficiently worthy that I ask it of her. In God's name, my lady, we are deriving little from love. The time is slipping by and we are losing the best (part of it).

[27] 40, 41-42, *ed. cit.*, p. 227 and compare 23-24, p. 226; 41, 51-52, *ed. cit.*, p. 238 and compare 29-31, p. 236.

[28] 36, 16-18, *ed. cit.*, p. 206. This kills me with grief that I have not the opportunity to come there often.

The very remembrance of her seems to draw his heart from his breast so that it is with her (l. 26). In his grief he cries:

ara cuit qu'e'n morrai
del dezirer que'm ve,
si'lh bela lai on gai
no m'aizis pres de se,
qu'eu la manei e bai
et estrenha vas me
so cors blanc, gras e le.[29]

Still he will not be recreant to their love in spite of the sufferings he endures. He commends himself entirely to her and to her mercy:

Bona domna, merce
del vostre fin aman!
qu'e'us pliu per bona fe
c'anc re non amei tan.
mas jonchas, ab col cle,
vos m'autrei e'm coman.[30]

Fin' amors, then, consists for Bernard in the contemplation of the beloved, in the union of hearts and wills but it does consist too in desiring the solaces of sensual delights of her and in the gifts of her favors. Bernard makes abundantly clear, however, that *fin' amors* does not include the physical possession of the beloved through intercourse. Such a love has only the name and appearance of love. It is common love as opposed to pure love:

c'amors no'n pot ges dechazer,
si non es amors comunaus.
aisso non es amors; aitaus
no'n a mas lo nom e'l parven,
que re non ama si non pren![31]

He is foolish who begs of his lady what is not befitting and who reproaches her for not acquiescing to such desires and demands:

e cel es be fols naturaus
que de so que vol, la repren
e'lh lauza so que no'lh es gen.[32]

In another poem attributed in one manuscript to Bernard but in reality by Daude de Pradas, *Amors m'envida e'm somo*, the same idea is expressed:

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[29] *Ibid.*, 30-36, *ed. cit.*, pp. 206-207. Translated *supra* note 16.

[30] *Ibid.*, 46-51, *ed. cit.*, pp. 207-208. Good lady, have mercy on your pure lover. For I swear to you in good faith that I have never loved anything so much. With clasped hands, with bowed neck, I deliver and commit myself to you.

[31] 15, 17-21, *ed. cit.*, p. 86. For love cannot ever fall so low unless it be common love. Love is not of such a kind; such (a love) has only the name and the appearance which does not love a thing unless it possesses it.

[32] *Ibid.*, 33-35, *ed. cit.*, p. 86. And he is indeed a pure fool who censures it (love) because of what it commands and praises it because of what does not befit it.

Non sap de dompnei pauc ni pro
qui del tot vol sidonz aver.
non es dompneis, pois torn' a ver
ni cors s'i ren per guizerdo.[33]

In spite of the suffering and sorrows that arise from his desires, it is these very desires that are at the root of his joy and it is these same desires and not the fulfilment of them that ennoble:

Fols! per que dic que mal traya?
car aitan rich' amor envei,
pro n'ai de sola l'enveya.[34]

* * * * *

Our study and analysis of the writings of the first troubadours has shown that from the very first literary appearance of courtly poetry there has existed a constant tradition of pure love,—*fin' amors*. From the standpoint of their conception of true love there is no distinction between idealists and realists; Guillaume IX, Marcabru, Cercamon, Bernart Marti are just as idealistic in their attitude towards and conception of true love, i.e., Courtly Love, as are Jaufré Rudel and Bernard de Ventadour. For them all this love,—*fin' amors, bon' amors, veraia amors, amors valens*,—is a love of pure desire and not of physical possession. It is not sadistic self-torture, stoical self-renunciation practiced for its own sake,[35] but it is a love wherein desire is not the end in itself but a means to the end,—progress and growth in virtue, merit and worth. It is the latter which is at the base of Courtly Love and not desire.[35a] Desire is an integral part, an essential part but what is of the very essence of Courtly Love is its ennobling power, the elevation of the lover effected by a ceaseless desire and yearning for the love of a worthy lady. That is why Cercamon says for example:

Aquest amor no pot hom tan servir
Que mil aitans no'n doble'l gazardos:
Que Pretz e Joys e tot quant es, e mays,
N'auran aisselh qu'en seran poderos.[36]

Bernard de Ventadour repeats continually the same idea. Thus:

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[33] Carl Appel, *ed. cit.*, p. 317. *Poésies de Daude de Pradas*, ed. A. H. Schutz (Toulouse, 1933), p. 71. He knows little or nothing of the service of women who wants to possess his lady entirely. That is not the service of women because it becomes a reality, nor does one yield one's heart for the sake of reward.

[34] 7, 38-40, *ed. cit.*, p. 42. Foolish one! why do I say that I suffer harm? From the very fact that I yearn for so mighty a love, I profit from the mere desire of it.

[35] Cf. Leo Spitzer, *L'Amour lo[i]ntain de Jaufré Rudel et le sens de la poésie des troubadours*, p. 10: Non, être douloureusement tourmenté par l'aiguillon charnel sans succomber, c'est l'orgueil moral du troubadour, orgueil qui lui fait refuser la pitié—orgueil tout stoïque qui place la sagesse dans la maîtrise des émotions. Le troubadour se maintient avec une virtuosité morale dans un équilibre parfait—désirant, ne consommant pas. It may be remarked that the poetry of the troubadours does not reveal any marked refusal of pity or any marked pride on the part of the lover. The contrary is invariably true. Humbly, as vassals, they seek mercy of their beloved.

[35a] Cf. Spitzer, *op. cit.*, pp. 1-2, pp. 12 and 35.

[36] V, 7-10, *Les Poésies de Cercamon*, ed. Alfred Jeanroy (Paris, 1922), p. 15. No one can be a servant of that love that his be not a thousand-fold the reward. For those who have such a love in their power have Worth and Joy and all that is and more.

Per re non es om tan prezans
com per amor e per domnei,
que d'aqui mou deportz e chans
e tot can a proez' abau.
nuls om ses amor re no vau,
per qu'eu no volh, sia mia
del mon tota'lh senhoria,
si ja joi no'n sabi' aver.[37]

It is not the object of love, the beloved, that ennobles but it is the love of her. The lover is ennobled through love of her:

Ja non creirai, qui que m'o jur,
Que vins non iesca de razim,
Et hom per Amor no meillur;
C'anc un pejurar non auzim
Qu'ieu vaill lo mais per la meillor.[38]

Bernard de Ventadour advances in virtue and worth through love, through love of his beloved:

Ben a mauvais cor e mendic
qui ama e no's melhura;
qu' eu sui d'aitan melhuratz
c'ome de me no vei plus ric,
car sai c'am e sui amatz
per la gensor qued anc Deus fei
ni que sia el mon, so crei,
tan can te terra ni dura.[39]

That love must remain a desire in order that the end may be fulfilled. Once consummated, desire weakens and consequently growth in virtue and worth lessens. On the contrary, everything that intensifies desire is not only legitimate and valid but is to be cultivated,—thoughts of the physical and moral charms of the beloved, social intercourse with her, embraces, kisses, physical contact, anything short of physical consummation.

Andreas Capellanus, therefore, was not propounding anything new or novel in his description of *purus amor*. Rather does he agree entirely with Bernard de Ventadour and with his predecessors and sums up their doctrine. Pure love consists in the contemplation of the mind and the affection of the heart. It binds together the hearts of the two lovers with every feeling of delight. It goes as far as the kiss and the embrace and the modest contact with the nude lover. But it omits intercourse because that is not permitted to those who love purely:

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[37] 21, 25-32, *ed. cit.*, pp. 119-120. By nothing is man made more excellent than by love and the service of women, for thence arises delight and song and all that pertains to excellence. No man is of value without love; wherefore I do not desire that all the mastery of the world were mine, if I might not have joy of it. Cf. also, 7, 1-8, p. 40; 22, 5-6, p. 127; 23, 9-14, p. 135; 42, 5-7, p. 241; 45, 15-17, p. 271.

[38] XIII, 25-28, *Poésies complètes du troubadour Marcabru*, ed. J. M. L. Dejeanne (Toulouse, 1909), p. 54. I shall never believe, whoever may swear so, that wine does not come forth from grapes and that a man does not grow better through love. For never have we heard of a man growing worse and I am worth the most through the best (of women).

[39] 24, 17-24, *ed. cit.*, p. 140. That man has indeed a vile and miserable heart who loves and does not grow better. For I have grown so much better that I see no man mightier than I, because I know that I love and am loved by the fairest creature that God ever created or who is in this world as long, I think, as the world shall last or endure. Cf. also 22, 5-8, p. 127.

> Et purus quidem amor est, qui omnimoda dilectionis affectione duorum amantium coniungit. Hic autem in mentis contemplatione cordisque consistit affectu; procedit autem usque ad oris osculum lacertique amplexum et verecundum amantis nudae contactum, extremo praetermisso solatio; nam illud pure amare volentibus exercere non licet.[40]

Physical possession of the beloved constitutes what Andreas calls *mixtus amor.*[41] Love of that kind lasts but a little time and quickly wanes. The reason is that possession puts an end to desire which is the essential means towards virtue and goodness. On the other hand, desire in pure love is increased and with the increase of desire comes increase and growth in merit and worth. Because it forbids consummation, pure love is chaste and the guardian of chastity; no injury can come from it, God sees very little offense in it; the beloved, widow or wife, suffers no harm or injury to her reputation.[42]

This idea of pure love and mixed love, the idea that love of desire, the source and origin of all virtue, is kept alive and increased by *amor purus* and decreased by *mixtus amor*, is stressed and urged by succeeding troubadours and is recognized by them as essential to love and the service of women. The preference given to unfulfilled desire and to the joy that comes from serving a beloved unrequited in the physical sense is made and expressed as against the fulfilment of passion and lust for other ladies. Thus Arnaut de Mareuil:

> Bona dompna de totz bos aips complida,
> tant etz valens part las meillors qu'ieu sai,
> mais am de vos lo talen e'l desir
> que d'autr' aver tot so c'a drut s'eschai.[43]

The poet repeats the same idea:

> Aissi cum cel c'am e non es amaz
> o hai eu fach, c'ai amat longamen
> en un sol luoc, e ges no m'en repen,
> ainz la voill mais amar desesperaz
> que d'autr' aver totas mas voluntatz.[44]

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[40] *Andreae Capellani de Amore libri tres* I, vi, H, ed. Amadeu Pagès (Castella de la Plana, 1930), pp. 105-106; translated John Jay Parry, *The Art of Courtly Love* (New York, 1941), p. 122.

[41] Mixtus vero amor dicitur ille, qui omni carnis delectationi suum praestat effectum et in extremo Veneris opere terminatur. Qui qualis sit amor, ex superiori potestis notitia manifeste percipere. Hic enim cito deficit et parvo tempore durat, et eius saepe actus exercuisse poenituit; per eum proximus laeditur et Rex coelestis offenditur, et ex eo pericula graviora sequuntur. *Ed. cit.*, p. 106; Parry, p. 123.

[42] Amor enim iste sua semper sine fine cognoscit augmenta, et eius excercuisse actus neminem poenituisse cognovimus; et quanto quis ex eo magis assumit, tanto plus affectat habere. Amor iste tantae dignoscitur esse virtutis, quod ex eo totius probitatis origo descendit, et nulla inde procedit iniuria, et modicam in ipso Deus recognoscit offensam. Et tali nempe amore neque virgo nunquam corrupta nec vidua vel coniugata potest aliquod sentire gravamen vel propriae famae dispendium sustinere. *Ed. cit.*, p. 106; Parry, p. 122.

[43] VIII, 17-20, *Les Poésies lyriques du troubadour Arnaut de Mareuil*, ed. R. C. Johnston (Paris, 1935), p. 45. Good lady, perfect in all good qualities, so worthy are you above all the best women that I know, still I prefer the longing and the desire of you to having all that falls to a lover.

[44] IX, 1-5, *ed. cit.*, p. 52. I, who have long directed my love in one single direction, have acted just as one who loves and is not

Ponz de Chapteuil confesses that the loving contemplation and the burning desire of his lady is a greater source of joy to him that any gift that another lady might make to him:

> L'amoros pensamens
> El rics volers auzatz,
> Q'eu ai, dona valens,
> De vostr' amor mi platz
> Miltanz qe neguns dos
> Q'autra far mi pogues.[45]

In a poem attributed to Folquet de Marseille, the author witnesses the general acceptance of this law of Courtly Love and attests the judgment of competent judges as to its truth:

> Et es ben dregz, qu'al laus dels conoissens
> es plus valens;
> Per qu'ieu n'am mais l'afan
> De lieys servir que d'autr' aver joi gran.[46]

Just as Bernard de Ventadour repudiated possession as common love and declared that it had but the name and appearance of love,[47] so Hugo Brunec longs for the pure love of yester years and states that desire dies with fulfilment:

> Que sazos fon, que'l maior don d'amar
> Voli' om mais esperar que aver;
> Et eras vey qued az emplit voler
> Moro'l dezir, que solon dous nafrar.
> Per que val mais d'amor so qu'om n'aten,
> Que'l cochos don desavinen no fan,
> Que'l mals n'es bos e plazentier l'afan,
> E'l sospir dous, e'l maltrag iauzimen.[48]

Peire Cardenal points out the distinction clearly. Just as Daude de Pradas[49] declared that those who wished full possession of their beloved were ignorant of the service of women, so he declares that those who look for such possession

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loved; and I do not repent of it at all, rather do I prefer to love without hope than to have all my desires (fulfilled) of another.

[45] V, 1-6, ed. Max von Napolski, *Leben und Werke des Trobadors Ponz de Capduoill* (Halle, 1879), pp. 55-56. The loving contemplation and the bold mighty desire that I have of your love, worthy lady, is a thousand times more pleasing to me than any gift that another lady might make to me. Cf. also Raimbaut d'Orange, ed. C. A. F. Mahn, *Die Werke der Troubadours in provenzalischer Sprache* I (Berlin, 1846), p. 68:

> E platz mi mais viure desesperatz
> Que si ieu fos per altra domn' amatz.

and Gaucelm Faidit, ed. C. A. F. Mahn, *Die Gedichte der Trobadors in provenzalischer Sprache* I (Berlin, 1856), civ, 12-13, p. 62:

> E platz mi mais per leis pena durar,
> Que de nuill' autr' aver tot mon talen.

[46] XXI, 13-16, ed. Stanislaw Stronski, *Le Troubadour Folquet de Marseille* (Cracow, 1910), pp. 92-93. And it is quite right, because according to the judgment of well-informed people, it is of more worth; therefore, I prefer the painful toil of serving her to having great joy of another.

[47] Cf. p. 174, note 31.

[48] VI, 37-44, ed. Carl Appel, 'Der Trobador Uc Brunec' *Abhandlungen Herrn Prof. Dr. Adolf Tobler* (Halle, 1895), pp. 75-76. For there was a time when one preferred to hope for rather than to have the greater gift of love. And now I see that the desires that used to wound sweetly die with the fulfilment of the will. Therefore, what one hopes for from love is of more value than obnoxious hasty gifts, for the pain of it is good, pleasant the toil, sweet the longing, and the suffering joy.

[49] Cf. p. 175, note 33.

do not know the nature of *fin' amors* but mistake lust and what is evil for true love:

> Aquesta gens, quan son en leur guayeza,
> Parlon d'amor, e no sabon que s'es,
> Quar fin' amors mov de gran leialeza
> E de franc cor, gentil e ben apres;
> Et els cuion de luxuria
> Et de tort, que bon' amors sia.[50]

* * * * *

III. *Its Amorality and Possible Source*

That the troubadours of Southern France and the circle for whom they wrote and sang their lyrics should have been interested in love and in the relationship of men and women is wholly normal and natural,—as normal and natural as that they should be alive and subject to the urges and instincts common to mankind. That they should conceive of pure love as desire for union with the beloved to be fanned by every means short of actual intercourse, by what Catholic and Christian term evil thoughts and desires, impure looks and touches, by proximate occasions to impurity, is not normal or natural in the Catholic and Christian age and atmosphere in which they lived. It is quite easy to see how, even under these circumstances, an individual poet or even several, should do so and exalt adultery and fornication: it is not quite so easy to see how a whole succession of poets should adopt such ideas and ideals and have them codified into a system. Courtly Love was formed, developed and spread in an atmosphere that was essentially Christian and Catholic and which had been so for centuries. The poems which express the ideas of Courtly Love were written by men who, for the most part, were Catholics and Christians and who had been reared in that faith and in that atmosphere. It is strange, then, that, apart from a purely surface coloring and the concept of Christian virtues,[1] there is so little trace of that Christianity and Catholicity in their love lyrics; it is equally strange that the conception of love they developed and expressed be so directly at variance with Christian and Catholic morality. For, from that point of view, their conception of love is wholly immoral. It is impossible to reconcile the tenets of Courtly Love with the commandments of God,[1a] with the Divine Will as interpreted by Saint Paul,[2] with the teaching of Christ[3] and of His Church.[4] From the point of view of the troubadours, however, love illicit and adulterous, at least in desire, though it may be, is the source of all good, of all virtue. It is love which enobles man:

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[50] XXIV, 1-6, ed. C. A. F. Mahn, *Die Werke der Troubadours* II (Berlin, 1885), p. 214. When they are mellow with merriment, those people speak of love and do not know what it is, for pure love springs from great fidelity and from a sincere, noble and well-instructed heart; and they imagine lust and evil to be true love.

[1] Die ständige Einwirkung der christlichen Weltanschauung auf die Dichter brachte noch andere Züge in die Dichtung hinein, die der Kanzone ihre spezifisch christliche Färbung gab, wie die Begriffe der Gnade und der Gerechtigkeit, der Pietas, der Humilitas, des Glaubens, der Hoffnung, sowie der Sinnbilder der heiligen Maria usw. A. Scheludko, 'Religiöse Elemente im weltlichen Liebeslied der Trobadors', *Zeitschrift für französische Sprache und Literatur* LX (1937), p. 34. What Guido Errante did for Marcabru's poetry, Scheludko attempted to do for courtly poetry in general in this article and a preceeding one in LXIX (1935), pp. 402-421.

[1a] Non moechaberis. *Exodus* xx, 14; nec desiderabis uxorem ejus. *Ibid.*, 17.

[2] Haec est enim voluntas Dei, sanctificatio vestra: ut abstineatis vos a fornicatione; ut sciat unusquisque vestrum vas suum possidere in sanctificatione et honore, non in passione desiderii, sicut et gentes, quae ignorant Deum. *I Thess.*, iv, 3-5.

[3] Audistis quia dictum est antiquis: non moechaberis. Ego autem dico vobis, quia omnis qui viderit mulierem ad concupiscendam eam, jam moechatus est eam in corde suo. Quod si oculus tuus dexter scandalizat te, erue eum, et projice abs te: expedit enim tibi ut pereat unum membrum tuorum, quam totum corpus tuum mittatur in gehennam. *Matt.* v, 27-30.

[4] Bonum est homini mulierem non

> Nuls om ses amor re no vau.[5]

One may point to the fact that the fabric of the Church at that time was torn by heresy, by anti-clericalism, by laxity in morals. That may explain the conscious, deliberate and carping denunciations of abuses extant in the clerical and lay world expressed, for example, in the *sirventes* of the troubadours; it will not explain a conception of love expressed in their *cansos*,—a love that in the eyes of God, of His Church and of Christians, is immoral and damnable but which in their own eyes is the source and origin of all virtue and of all good, which ennobled and raised the lover in worth and praise in his own eyes, in the eyes of his beloved and of the courtly world.

It cannot be said that the troubadours were bad Catholics or that they were wholly irreligious. A goodly number of them were so; a goodly number ended their days in monasteries.[6] One of the greatest of them, Bernard de Ventadour, for example, towards the close of his life in 1194, entered the monastery at Dalon and died there as a monk. Folquet of Marseilles became Abbot of Le Thoronet and then Bishop of Toulouse in 1205. Guy de Folqueys rose to the Chair of Peter as Clement IV. Many of them took part in the Crusades,—Jaufré Rudel, Peire Vidal. Guillaume IX, during the course of his life, was at odds with the Church for his immorality and disobedience, was excommunicated, but he did further the cause of Christ and the extension of God's Kingdom on earth by word and deed as a Crusader and as a poet. Before the Inquisition and the resultant enforced return to orthodoxy made religious poetry and, especially, that devoted to the Blessed Virgin follow the order if not the taste of the day, there were many poems of a religious nature.[7] There was even the consciousness of the antagonism that lay between the service of God and the service of love:

> De proeza e de joi fui,
> Mais ara partem ambedui;
> Et eu irai m'en a scellui
> On tut peccador troban fi.
>
> Mout ai estat cuendes e gais,
> Mas nostre Seigner no'l vol mais;
> Ar non puesc plus soffrir lo fais,
> Tant soi aprochatz de la fi.
>
> Tot ai guerpit cant amar sueill,
> Cavalaria et orgueill;
> E pos Dieu platz, tot o acueill,
> E prec li que'm reteng' am si.[8]

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tangere. *I Cor.* vii, 1; Carissimi, obsecro vos tamquam advenas et peregrinos abstinere vos a carnalibus desideriis, quae militant adversus animam. *I Petr.* ii, 11. Cf. also *II Petr.* ii, 9-14.

[5] Bernard de Ventadour, 21, 29, ed. Carl Appel, *Bernart von Ventadorn, seine Lieder*, p. 120. No man is of any worth without love. For further examples, cf. A. J. Denomy, 'An Inquiry into the Origins of Courtly Love', *Mediaeval Studies* VI (1944), pp. 178-179.

[6] Cf. Victor Lowinsky, 'Zum geistlichen Kunstliede in der altprovenzalischen Literatur bis zum Gründung des Consistoire del Gai Saber', *Zeitschrift für französische Sprache und Literatur* XX (1898), p. 168, n. 23.

[7] Cf. Victor Lowinsky, *art. cit.*, pp. 168-174 and Alfred Jeanroy, *La Poésie lyrique des troubadours* II (Paris, 1934), pp. 307-310.

[8] Guillaume IX, XI, 25-36, ed. Alfred Jean-

Peire d'Auvergne will re-echo Guillaume's farewell to love and courtly service of women with the implication that such love and service are incompatible with the love and service of God. He has enjoyed himself in the world, sinfully so:

> Qu'el segl' ai fag mon plazer
> Tan qu'en sui de trop peccaire.[9]

Now he renounces love in favor of the love of God:

> Amors, be'us degra doler,
> si negus autr' enginhaire
> mas lo dreituriers jutjaire
> de vos me pogues mover,
> que per vos er' enriquitz,
> essausatz et enanitz
> e pel senher de Belcaire.
>
> Mas so non pot remaner,
> cortez' amors de bon aire,
> don mi lais esser amaire,
> tan m'agrad' er a tener
> lai on vol sanhs esperitz;
> e mas el mezeis m'es guitz,
> no'us pes s'ab vos non repaire.[10]

But in their love lyrics, the troubadours refer very seldom to religion, to God or to the things of God. When they do, invariably their references are to our minds shocking and irreverant. Guillaume IX praises God and Saint Julian that he has so well learned the game of love:

> Dieu en lau e Sanh Jolia:
> Tant ai apres del juec doussa
> Que sobre totz n'ai bona ma.[11]

Peire Vidal declares that God has granted his lady more of perfection than He has retained for Himself:

> Domna, Deus qu'es leials e vers

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roy, *Les Chansons de Guillaume IX* (Paris, 1913), p. 28. I have belonged to prowess and to joy but now we part, each of us; and I shall go off to Him in whom all sinners find their end. I have been gracious and gay but Our Lord wills that no longer; now I can no longer endure the burden, so near have I approached the end. I have given up all that I was accustomed to love,—chivalry and the pride of life; and since it pleases God, all this do I accept and I pray that He may keep me with Himself.

[9] XV, 15-16 ed. Rudolf Zenker, *Die Lieder Peires von Auvergne* (Erlangen, 1900), p. 122. For in the world have I done my pleasure to such an extent that I am thereby too much a sinner.

[10] *Ibid.*, 50-63, *ed. cit.*, pp. 123-124. Love, you should indeed have reason to complain if any other contriver than the just Judge should be able to separate me from you, because through you was I enriched, exalted and furthered and by the Lord of Beaucaire. But this cannot endure, Courtly Love of noble origin, wherefore I cease being a lover so happy am I to go now there where the Holy Ghost wills; and since it is He who directs me, do not take it amiss if I do not return to you.

[11] VI, 29-31, *ed. cit.*, pp. 14-15. I praise God and Saint Julian that I have learned the sweet game (of love) so well that I am skilful above all others in it. Cf. also X, 23-24, p. 26.

Vos a datz pretz, honor e be
Pro mais que no'n retenc ab se.[12]

Arnaut Daniel describes the efforts he has made that his love may have a successful issue:

Mil messas n'aug e'n proferi
E'n art lum de cera e d'oli
Que Dieus m'en don bon issert
De lieis on no'm val escrima.[13]

Daude de Pradas will rather renounce his claim to Paradise for there he cannot hold dear his lady:

Tant sen al cor un amoros desir,
q'i an mei oill novellamen aissis,
qu'ieu non voill ges esser en paradis
per so que mais non pogues car tenir,
lai on Beltaz e Jovens seignoreia
e tot acho q'az Amor plaser deia.[14]

In the same spirit, Raimon Jordan prays God to accord him one night with his beloved as he would pray for Paradise:

E s'eu en dic mon conort,
No m'o tengatz ad orgolh,
Que tan la desir e volh
Que, s'er' en coita de mort,
Non queri' a Deu tan fort
Que lai el seu paradis
M'aculhis
Com que'm des lezer
D'una noit ab leis jazer.[15]

There is no indication, implied or explicit, that the troubadours were conscious of anything shocking, irreverent or disrespectful in thus invoking the divine assistance and the aid of holy things and persons in furthering their quest for what in Christian eyes is sinful and immoral. It seemed perfectly natural for them to do so. Likewise, there is no indication that they were conscious of the sinfulness or immorality of their conception of love, even of pure love. On the contrary, it was the source of virtue, of good; it was the ennobling force of man, productive of good deeds, even of chastity:

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[12] VIII, 61-63, ed. Joseph Anglade, *Les Poésies de Peire Vidal* (Paris, 1913), p. 22. My lady, God, who is just and true, has given you more of worth, of honor and of blessings than He has retained for Himself. Cf. also, XVI, *passim*, pp. 47-50.

[13] X, 15-18 ed. René Lavaud, *Les Poésies de Arnaut Daniel* (Toulouse, 1910), p. 60. I hear and have a thousand masses said and I burn lights of wax and oil for this that God may grant me fair success with her where no (human) endeavor avails me.

[14] VIII, 1-6, ed. A. H. Schutz, *Les Poésies de Daude de Pradas* (Toulouse, 1923), p. 35. I feel in my heart so loving a desire that my eyes there have just now fixed, so that I do not at all wish to be in Paradise because I could never hold dear her in whom reigns Beauty and Youth and all that usually gives pleasure to Love.

[15] XIII, 46-54, ed. Hilding Kjellman, *Le Troubadour Raimon-Jordan* (Upsala, 1922), pp. 113-114. And if I tell you the joy that I have of her, do not hold it against me as a prideful thing, because so much do I desire and want her that, if I were in danger of death, even then I would not so strongly beg God to receive me in His Paradise as I do beg Him to grant me the opportunity of lying one night with her. For further examples, cf. Victor Lowinsky, *art. cit.*, pp. 163-165. It is interesting to note that, throughout the lyrics of Bernard de Ventadour, whenever God is mentioned it is to call upon Him to further the lover's suit and to assist him in obtaining a boon of the beloved: 9, 26, *ed. cit.*, p. 56; 10, 17, p. 61; 17, 58, p. 101; 25, 21, p. 146; 26, 22, p. 152; to call God's curse upon faithless lovers and those who would betray the secret of love: 7, 24, p. 41; 13, 53, p. 78; 19, 42, p. 111; to beg God that he may ever love: 15, 8, p. 85; 31, 13, p. 188; or to invoke God's name as witness of his love: 17, 35, p. 100; 20, 32, p. 115.

> Ben devon li amador
> De bon cor servir Amor,
> Quar amors non es peccatz
> Anz es vertutz quels malvatz
> Fai bos, elh bo'n son melhor,
> E met om en via
> De bon far tota dia;
> E d'amor mou castitatz
> Quar qui'n amor ben s'enten
> No pot far que puois mal renh.[16]

As a matter of fact, Courtly Love of the troubadours is neither moral nor immoral. It is amoral in the sense that it is wholly divorced from Christian morality. As we read their lyrics, we are inclined, unconsciously perhaps, to judge their conception of love by a code of morality that is ours. Whether we are conscious of it or not, we apply to Courtly Love criteria of morality that are Christian, standards governing the relationship of the sexes that are derived from Christian principles and Christian teachings. The morality or immorality of Courtly Love for those who taught it is to be judged by the code of morality of Courtly Love. What is immoral and impure by our standards may be, and is, purely moral from their point of view. Thus the troubadour and Christian conception of pure love are at entirely different poles, so much so that when the Christian and troubadour speak of pure love, they are speaking, as it were, two different languages. Pure love for the Christian is devoid of physical, carnal recompense, of even the thought and desire of it. For the troubadour, *fin' amors* forbids intercourse and that is all; it allows every physical and carnal boon of the beloved that is not intercourse,—thoughts, desires, looks, embraces and touches that are mortal sins in Christian eyes. Pure love for the troubadour does not mean pure in the Christian sense of free from moral defilement, chaste and guiltless, but pure in the sense of absolute, complete, free from adulteration of false love. Therefore, the crudities that we find in the most spiritual lyrics need not disconcert us,[17] nor need we feel it necessary to explain them away.[18] They are wholly in accord with the courtly conception of pure love.

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[16] *Le Troubadour Guilhem Montanhagol*, ed. Jules Coulet (Toulouse, 1898), p. 69, ll. 11-20. Lovers ought indeed to serve love with a true heart for love is not a sin. Rather it is a power that makes the evil good and by it the good become better. It puts man in the way of doing good daily. From love arises chastity because he who turns all his thoughts on love cannot do anything afterwards that is evil.

[17] Thus Carl Appel finds it difficult to reconcile Cercamon's prayer for carnal pleasure with his attack on false love and false lovers. *Op. cit.*, p. LXVII.

[18] Wechssler would explain away the expression of the sensual cravings and desires of the troubadours for favors from their beloved as remnants of Germanic May-poems. Cf. Eduard Wechssler, *Das Kulturproblem des Minnesangs* I (Halle, 1909), pp. 322-25, 332; the desire of the troubadours to be present when their lady disrobes as a custom of feudal ceremony, *ibid.*, p. 164. There seems to be no need to explain these realistic notes in Courtly Love poetry if one will only accept what the troubadours themselves say pure love is and not try to read into their conception what one understands

Courtly Love is not at all concerned with the Christian concept of the morality of sexual love. The troubadours simply do not advert to it. For them the morality of love lies not in the commandments of God, the teaching of Christ or of His Church, but in the adherence to rules and conventions formulated by them and codified by Andreas Capellanus, and by the observance of the virtues that must bedeck the lover, especially that of fidelity. It is significant that Andreas' treatise is entitled *De arte honeste amandi*.[19] It is by following these rules, by being faithful to the virtues, that men and women love honestly,—worthily, virtuously, honorably, purely. In cultivating such a love, lovers are made worthy, virtuous, pure and honorable. Thus, there is a chasm between the concept of love of the Christian and that of the troubadour. What is a sin for the Christian is a virtue in the courtly lover; what is impure, pure; what is shameful and foul, honorable and worthy. Courtly Love has a code of morality that is peculiarly its own. It is presented as neither immoral nor moral: it is amoral, wholly divorced from any code of morality except its own. Its subjective morality is not to be judged by the Christian standard.

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Whence comes this concept of love proper to the troubadours? Certainly it is not Christian; it is, if anything, anti-Christian. No Christian teaching could derive a conception of pure love that, while aspiring to union, remains pure in spite of its desire for and indulging in sensual pleasures, and which, nevertheless, is an ennobling force in man and the source of all good and virtue. The courtly conception of love is incompatible with Christian morality. Nor is it pagan in origin. The pagan conception of love would recognize the pleasures to be derived from sensual desires and indulgence; it would not provide the basis for a dogma that such carnal desires fanned by sensual pleasures ennobled man and was the fount and origin of virtue. The art of love for Ovid was a frankly sensual one, an art of seduction and deception that did not hesitate to cross the limits of intercourse. Ovid never claimed that such love was ennobling; he would admit that it was shameful and debasing. Nor could Albigensianism, which was of great influence during the age of the troubadours and of the formation of their ideas, tolerate the courtly concept of *fin' amors* because of the basic dogma of its heresy. Their doctrine of the double principle of good and evil, of spirit and matter, would preclude the possibility that their heresy could provide a basis for the moral code of Courtly Love or that they would view with favor a doctrine that exalted fornication and adultery and the desire of it. They sought to divorce the soul, the good principle, from the body, the evil principle, if not physically by abstracting themselves from the body, its necessities and propensities. Anything

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of pure love from Christian sources. Thus Guido Errante describes Andreas Capellanus' description of *amor purus* as *monstruosa morbidità* because, though it fits exactly the troubadour conception of pure love, it just will not fit in with the conception of pure love he finds in mediaeval mysticism. Cf. *Sulla Lirica romanza delle Origini* (New York, 1943), p. 376.

[19] *Honestum* is opposed to *turpe*,—what is base, vile, impure or shameful or what makes so. Cf. Cicero, *De Finibus Bonorum et Malorum*, IV, 27, 75, ed. C. F. W. Müller (Leipzig, 1908), p. 230. Cicero thus defines *honestum*: tale est illud ipsum honestum, quandoquidem honestum aut ipsa virtus est aut res gesta virtute; quibus rebus vita consentiens virtutibusque respondens recta et honesta et constans et naturae congruens existimari potest. *Ibid.* V, 23, 66, *ed. cit.*, p. 264. It is that which is laudable for its own sake: Honestum igitur id intelligimus, quod tale est, ut detracta omni utilitate sine ullis praemiis fructibusve per se ipsum possit laudari. Quod quale sit, non tam definitione, qua sum usus, intelligi potest, quamquam aliquantum potest, quam communi omnium iudicio et optimi cuiusque studiis atque factis, qui permulta ob eam unam causam faciunt, quia decet, quia rectum, quia honestum est, etsi nullum consecuturum emolumentum vident. II, 14, 45, p. 140.

that tended to the multiplication of existences was abhorrent to them as the work of Satan, the evil principle. Passion, desire for carnal union and sensual pleasures were evils that incited to sin.[20]

There is one indication that, I think, may act as a guidepost in pointing the way to a possible source of this conception of *fin' amors* common to the troubadours and so foreign to their cultural and religious background.

On the 7th of March, 1277, Stephen Tempier, Bishop of Paris, condemned 218 philosophical, moral and theological propositions as erroneous, contrary and dangerous to faith and morals. He excommunicated those who presumed to teach, defend and hold them.[21] This condemnation and sentence of excommunication were levelled at the teaching of the Latin Averroists, particularly Siger of Brabant and Boethius of Dacia, concerning the nature of philosophy, of God, concerning the divine will and knowledge, causality, the nature and operation of the Intelligences, the generation and eternity of the world, necessity and contingency, the nature of man, the Agent Intellect, the operation of the human intellect and will, moral and theological problems. All of these errors were based on the premise that they are true according to philosophy but not according to faith.[22] Prefaced to the list of propositions are condemnations of individual books. The first of these specifically condemned is: *Librum etiam "De amore", sive, "De Deo amoris", qui sic incipit: Cogit me multum, etc., et sic terminatur: Cave, igitur, Galtere, amoris exercere mandata, etc.*[23] This book remained unidentified until Mgr. Martin Grabmann, at the suggestion of his colleague, Professor Paul Lehmann, definitely identified it from the *incipit* and *explicit* as the treatise on love by Andreas Capellanus[24] written some ninety odd years before.[25] In the same preface to the list of condemned Averroistic propositions, condemnation is pronounced against a specific treatise on necromancy and on various and unidentified books, treatises, pamphlets that deal with black magic, on certain essays on fortune telling, conjuration of demons or abjurgations to the danger of souls.[26] The fact that the *De Amore* is grouped along with these works would seem to lessen any sure indication that the Bishop of Paris condemned it because of the definite Arabian and Averroistic tendencies it contained. There was ample reason for its condemnation simply on the definite opposition of its contents and teaching to those of the Church and so on the grounds of its danger to faith and morals. But among the list of condemned propositions are several that are linked quite closely and definitely with the specific teaching of the *De Amore* and which finds analogues there in the teaching of Courtly Love as expounded by the *Homo*. Some of these have been pointed out by Grabmann,[27] especially the relation of the doctrine of Andreas on pure and mixed love[28] with the condemned proposition: *Quod simplex fornicatio, utpote soluti cum soluta, non est peccatum.*[29] The condemnation of Stephen Tempier in 1277 of the De *amore* in particular and of several Averroistic doctrines that are definitely linked to the *De Amore*, the textbook of Courtly Love, at least points the direction to which we may look for a possible source of the troubadour conception of *fin' amors*. It is to the Arabs.

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[20] Cf. Jean Guiraud, *Histoire de l'Inquisition au Moyen Age* I (Paris, 1935), pp. 90-99. Cf. also Alanus de Insulis, *Contra Hereticos* I, 74; PL 210, 376: Item, caro praebet fomentum luxuriae, et ideo a carnibus abstinendum est, quia ab omnibus quae praebent incitamenta peccati, abstinendum est.

[21] Cf. *Chartularium Universitatis Parisiensis* I, ed. Denifle et Chatelain (Paris, 1889), pp. 543-558 and Pierre Mandonnet, *Siger de Brabant et l'Averroïsme latin au XIII^{me} siècle II* (2nd ed., Louvain, 1908), pp. 175-191.

[22] Dicunt enim ea esse vera secundum philosophiam, sed non secundum fidem catholicam, quasi sint due contrarie veritates, et quasi contra veritatem sacre scripture sit veritas in dictis gentilium dampnatorum. Denifle et Chatelain, *op. cit.*, p. 543; Mandonnet, *op. cit.*, p. 175.

[23] Denifle et Chatelain, *op. cit.*, p. 543; Mandonnet, *op. cit.*, p. 176.

[24] 'Das Werk *de Amore* des Andreas Capellanus und das Verurteilungsdektret des Bischofs Stephan Tempier von Paris vom 7. Marz 1277', *Speculum* VII (1932), pp. 75-79.

[25] The date usually assigned to the composition of the *De Amore* is 1184-1186. Cf. Arpad Steiner, 'The Date of the Composition of Andreas Capellanus de Amore', *Speculum* IV (1929), pp. 92-95 and 'The Identity of the Italian Count in Andreas Capellanus de Amore', *Speculum* XIII (1938), pp. 304-308. The condemnation of 1277 is a tribute to the popularity and influence of the work. Its literary influence is treated by E. Trojel in his edition. Cf. also, Max Manitius, *Geschichte der lat. Literatur des Mittelalters* III (Munich, 1931), pp. 282-286 and John Jay Parry, *The Art of Courtly Love by Andreas Capellanus* (New York, 1941), pp. 22-24.

[26] Item, librum Geometriae, qui sic incipit: *Existimaverunt Indi, etc.*, et sic terminatur: *Rationcinare ergo super eum, et invenies, etc.*, item, libros, rotulos seu quaternos nigromanticos aut continentes experimenta sortilegiorum, invocationes demonum, sive conjurationes in periculum animarum, seu in quibus de talibus et similibus fidei orthodoxe et bonis moribus evidenter adversantibus tractatur, per eandem sententiam nostram condempnamus. Denifle et Chatelain, *op. cit.*, p. 543; Mandonnet, *op. cit.*, p. 176.

The theme of pure love was celebrated among the mythical Bedouin tribe of Odhrah.[30] It was the tradition among the *Banou Odhrah* that when lovers love, they die. It is related that when Said ibn 'Uqba al-Hamadani asked a Bedouin to which tribe he belonged, the Bedouin replied that he was of those people who die when they love, that is, of the tribe of Odhrah. Said asked why this was so and the youth replied that it was "because our women are beautiful and our young men are pure".[31] That purity was apparently based on the conviction of the ephemeral character of passion and on religious grounds. It is told how an Odhrah youth fell in love with a young Bedouin girl. One dark night, after repeated attempts, the youth found an opportunity to meet her. After talking with her for some time, no longer able to suppress his passion, he begged her to give herself to him. She refused his plea and after reminding him of the transitoriness of human lust and of divine punishment, she retired. Shamed and confused, the lover was forced to confess that she was right.[32]

The Odhrah ideal was Djamil who died in this way for love of Buthania. Djamil ben Abd Allah ben Mamar was a poet who lived in the first century after the Hegira. As a youth, he fell in love with Buthania of the same tribe of Odhrah. He wooed her as a young man but was rejected by her father. Nevertheless, he still kept up secret relations with her, even after she had married a certain Nubaith. Her kinsmen stirred up the authorities against him and he was forced to flee. After many wanderings he died in Egypt in 701. His love poems are all directed towards Buthania.[33]

> You have continued, O Buthania! (to torment me), so that the turtle-dove would sympathize with me, were I, in the ardour of my passion, to awaken its complaints with mine. The jealousy of spies only increased my love, and the prohibitions of my friends only made me persevere. The distance which separates us has not rendered me indifferent, and the weary nights have not forced me to renounce you. O thou whose lips are a sweet source, knowest thou not that I languish with thirst on the day

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[27] *Art. cit.*, pp. 77-78.

[28] *Ed. cit.*, pp. 105-106; Parry, pp. 122-123.

[29] Denifle et Chatelain, *op. cit.*, No. 183, p. 553; Mandonnet, *op. cit.*, No. 205, p. 190. Compare also: Quod pauper bonis fortunae non potest bene agere in moralibus, No. 170 Denifle et Chatelain, *op. cit.*, p. 553, No. 212, Mandonnet, *op. cit.*, p. 190 with *De Amore* I, 2: Nam inopiae quisque necessitati suppositus deflexo incipit incedere vultu et multis cogitationibus cruciari, et omnis eum alacritas derelinquit. Qua quidem cessante illico melancholia ex adverso consurgit, in eo suum sibi locum vindicat ira, et ita incipit esse alteratus amanti et ei terribilis apparere, sicque incipiunt amoris incrementa deficere; ergo incipit amor diminui. *Ed. cit.*, p. 4; Parry, p. 30; cf. also II, 3, p. 142; Parry, 154; II, 7, p. 159. Parry, p. 164.

[30] Cf. Louis Massignon, *The Encyclopedia of Islam* IV² (London, 1929), *art.* Udhri, p. 990.

[31] Rudi Paret, *Früharabische Liebesgeschichten* (Bern, 1927), No. 43, p. 18. Paret has summarized the some six hundred poems and tales collected by Ibn as-Sarradsch (*ca.* 1027-1106) and incorporated in his *Masari al-Ischachaq* (*Scenes of Love*).

[32] Rudi Paret, *op. cit.*, No. 44, p. 19.

[33] Cf. A. Schaade, *Encyclopedia of Islam* I (London, 1913), *art.* Djamil, p. 1012.

> in which I see not thy face? I often feared that death might surprise me whilst my soul needed thee, as still it does.[34]

Their love for each other was a pure one; their infrequent meetings were tender and chaste:

> Then Buthaina went forth with her female companions to the palm trees, and I went with them to Djamil. The lovers did not separate until morning dawned, and I never saw a more virtuous meeting.[35]

Of that meeting, Djamil wrote:

> And she said: By the life of my brother, and the kindness of my father! I shall awake the family unless thou withdrawest. Struck with fear at her words, I was retiring, when she smiled, and I knew that her oath would not be kept. I then took her by the ringlets and kissed her lips, with the pleasure that a man whose throat is parched with intoxication, drinks the cool water of a spring.[36]

As he lay dying, Djamil was able to confess that never had he committed fornication, never had he laid hands on his beloved with improper intention. Abbas ibn Sahl as-Saidi related the following:

> When in Syria, I met one of my friends who said to me: Would you like to see Djamil? he is sick; let us go and visit him. On entering we found him near his last, and on seeing me he said: O Ibn Sahl! what sayest thou of a man who never drank wine, never committed fornication nor murder; who never stole, and who beareth witness that there is no god but the only God? My answer was: I think that he has attained salvation, and hope that he will enter paradise; and who is that man? It is I, replied Jamil. By Allah, said I, I do not think that thou wilt gain salvation after having celebrated, for the last twenty years, the charms of Buthania. May I be deprived of the intercession of Muhammed, said he, I that am now entering into the first day of the life to come, and am in the last day of my life in this world,—if I ever placed my hand on her with an improper intention.[37]

It was not the fear of the punishment of God alone that kept him continent,[38] nor was it religious law and custom that preserved the purity of the lovers; rather was it their concern for and desire of it and their deep love:

> I should blush with shame were I seen to love one whom another has already loved, or were another to be loved (by my mistress) after me. (I should recoil) from sipping at thy lips, if love existed no longer; I

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[34] *Ibn Khallikans Biographical Dictionary*, trans. by Baron MacGuckin De Slane I (Paris, 1842), p. 332.

[35] De Slane, *op. cit.*, p. 334. Compare the poem by Hamzahn ibn Abi Daygham related by Ibn Dawoud in his *Kitab al-Zahrah* and translated by Louis Massignon, *La Passion de Al-Hallaj* (Paris, 1914-21), pp. 175-176. Ibn as-Sarradsch relates how Al-Hasan ibn Alid al-Anazi saw how a pair of lovers, after having talked together harmlessly from the beginning of the night until morning, rose up to pray. Cf. Rudi Paret, *op. cit.*, No. 41, p. 18.

[36] De Slane, *op. cit.*, p. 334.

[37] *Ibid.*, pp. 334-335.

[38] Cf. Rudi Paret, *op. cit.*, Nos. 44-53, pp. 19-22. All of these poems illustrate the power of divine punishment in preserving the purity of lovers.

> should reject thy attachment, were it feeble. I avoid a troubled source at which many have drunk before.[39]

Djamil was content with little from his beloved,—a word, a sight of her, their infrequent meetings. It is to be noted, however, as in the above extract, that kissing his beloved was compatible with the purity of their love. As it is, he must be content with his vain hopes and his desires:

> Did the jealous spy who observes my conduct know with how slight a favour Buthaina could make me happy, his envious passions would repose. (A word from her,) a *no* or an *unless* suffices to content me; vain desires, hopes long deferred and at last deluding my expectations, the sight of her for an instant, the year which begins and ends without my meeting her; (such are the enjoyments for which I am envied).[40]

His love is desire, desire that never will be assuaged:

> When I said: O Buthania! what is this passion which causeth my death? she replied: It is deeply rooted and will augment. When I said: Buthania! restore to me a portion of my reason so that I may live! she replied: that (which thou desirest) is far beyond thy reach.[41]

And again:

> Whilst I live, my heart shall love thee; and if I die, my ghost shall flit after thine among the tombs. I look towards thee for the fulfilment of thy promise, as the poor looketh (imploringly) towards the rich. Other debts are paid, but there is a debtor who keeps no engagement with us, and who yet is not pressed (by us).[42]

Were that promise kept and the debt paid, then, perhaps, would come forgetfulness:[43]

> J'aime mieux, en me privant de toi,
> Garder mon coeur navré, garder mes yeux noyés.
> Oui, je t'avais demandé l'étreinte qui eût calmé
> Mon sang, mais sache-le, je me sens apaisé.
> Ah! non, n'accomplis pas ta promesse de m'aimer
> De peur que vienne l'oubli! Je veux être avare de mes sanglots.[44]

Thus the love of Djamil for Buthania is first of all a love of desire for physical union but which remains pure and unsullied, though it does allow the reward of kissing, embracing and perhaps more in order that its fervor may endure. Fulfilment, intercourse, would destroy it.

This conception of pure love with the added note of the ennobling power of it is found crystallised in the *Treatise of Love* by Avicenna.[45] In the fifth chapter of that treatise, entitled *On the Love of those who are Noble-Minded and Young*[46] *for External Beauty*, occurs this passage:

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[39] De Slane, *op. cit.*, pp. 332-333.

[40] *Ibid.*, p. 332.

[41] *Ibid.*

[42] *Ibid.*

[43] Cp., pp. 177-178, the similarity with the Courtly Love teaching of the power of fulfilment to lessen and weaken love.

[44] Quoted from Louis Massignon, *La Passion d'Al-Hallaj*, p. 174.

[45] Translated by Emil Fackenheim, *infra*, pp. 208-228.

> Three things follow from the love of a beautiful human form: (i) the urge to embrace it, (ii) the urge to kiss it and (iii) the urge for conjugal union with it.
>
> As for the third, it is obvious that this is specific to the animal soul alone, and its hold on the latter is very strong, so much so that it maintains the position of a steady companion, more, of a master, and certainly not of a tool. It is very hideous. Rational love, can, therefore, not be pure except when the animal faculty is altogether subdued. With respect to the desire for conjugal union, it is fitting that a lover who entices the object of his love with this purpose in mind should be suspected, except if his need has a rational purpose, i.e., if his purpose is the propagation of the species. This is impossible with a man, and with a woman who is forbidden by religious law it is abominable. It is permissible and may find approval only in the case of a man with either his wife or female slave.
>
> As for embracing and kissing, the purpose in them is to come near to one another and to become united. The soul of the lover desires to reach the object of his love with his senses of touch and sight, and thus he delights in embracing it. And he longs to have the very essence of his soul-faculty, his heart mingle with that of the object of his love, and thus he desires to kiss it. These actions, then, are not in themselves blameworthy. However, feelings and actions of excessive lust happen to follow them frequently, and this makes it necessary that one should be on guard against them, except if the complete absence of physical appetite and immunity even from suspicion is beyond doubt . . .
>
> Whoever is filled with this type of love is a man of nobility and refinement, and this type of love is an ornament and a source of inner wealth.[47]

If we compare what we have learned of *fin' amors* from our analysis of the writings of the first troubadours with the conception of pure love exemplified among the *Banou Odhrah* and taught by Avicenna, we see that they have the following essential points in common:

> (i) Intercourse is forbidden as impure, hideous and abominable. The desire for it arises from the animal nature of man.
> (ii) Love is pure only when such animal desires are subdued. Pure love consists in the union of the souls and hearts of the lovers.
> (iii) Embracing and kissing on the part of the lovers, the use of their senses of sight and touch, are not blameworthy actions but, on the contrary, effect an ever closer and more intimate union of heart and soul.
> (iv) Kissing and embracing, the use of the senses of touch and sight belong to pure love if there is complete absence of physical and sensual appetite. Thus pure love, as regards the object of physical desire, must remain in the state of desire.

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[46] The use of the word 'Young' is intriguing when one thinks of Marcabru's constant use of 'Jovens' as synonymous with nobleminded, generous etc. cf. IV, 35, *ed cit.*, p. 15; IV, 44, *ibid.*; V, 37, 45, p. 21; VIII, 4, p. 32; IX, 13, p. 37; etc.

[47] Cf. *infra*, pp. 221-222.

(v) Love of this type, the pure love of rational creatures, is that of noble and delicate souls and the source of good and virtue.

Avicenna's doctrine on love does not reflect the official attitude of Islam. In the early Muslim period, women were subject to men, either to their nearest kinsmen if unmarried or to their husband. Polygamy and divorce were common as well as concubinage. It was the husband's business to see that his wife's honor was not violated since she was his property. If he failed in his duty, then no stigma attached to the woman for alliance with another man: "There was in fact no legal or moral sanction to enforce the laws of proprietary marriage, and although within a man's own tribe it was regarded as normal and honorable to respect his rights in his wife as in any other property, yet if a man from another tribe seduced a married woman, he committed no unlawful or dishonorable act and poets continually boasted of their surreptitious amours".[48]

Mohammed's position in regard to the status and condition of women was the traditional one among the Arabs.[49] Men stood superior to women in that God had preferred the one to the other and had committed women to the care and protection of man.[50] On the other hand, equality both material and spiritual is recognized. Paradise and its blessings are equally for the believing woman as well as the believing man.[51] The greatest reform that the Prophet accomplished in regard to women affected their relations with men. He restricted the number of wives a Muslim might lawfully have to two, three or four.[52] The *Koran* speaks much of divorce but it is concerned with the procedure to be followed rather than with the grounds of divorce. No justification is demanded of a husband so that he might divorce at his own will or caprice.[53] In the matter of concubinage, which is distinct from marriage in that only slave girls might be held so, there was no restriction on the number of female slaves held in concubinage. The master might marry a slave if she were of the Muslim faith.[54] These slave girls were the master's property and he might freely use and dispose of them. The law placed no limit on the number of concubines a man might have in addition to or in place of wife or wives. Concerning adultery and fornication, the *Koran* provides the penalty and procedure to be followed in the accusation and proof.[55]

How far the *Koran* actually influenced the sexual morality of the Arabs is difficult to ascertain. At least it provided legal sanctions against breaches of the laws of marriage. Moreover, Mohammed exhorted towards sexual modesty. Through the Prophet, God promised forgiveness and reward to chaste men and to chaste women,[56] and exhorted his followers to purity and modesty: "Speak unto the true believers, that they restrain their eyes and keep themselves from immodest actions. This will be more pure for them".[57] To the Muslim women God commands Mohammed: "Speak to the believing women, that they restrain their eyes, and preserve their modesty".[58] Fornication is forbidden to the unmarried: "Draw not near unto fornication; for it is wickedness, and an evil way".[59] To the married God commands that the husband live chastely with his wives: "Living chastely with them, neither committing fornication, nor treating them for concubines".[60]

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[48] Reuben Levy, *Introduction to the Sociology of Islam* II (London, 1933), p. 136; cf. also Joseph Wellhausen, *Die Ehe bei den Arabern*, Nachrichten von der k. Gesellschaft der Wissenschaften zu Göttingen, 1893, pp. 433 ff.

[49] The opinions and traditional sayings of the Prophet favorable and hostile to women are listed by Mansour Fahmy, *La Condition de la femme dans la tradition et l'évolution de l'Islamisme* (Paris, 1913), pp. 40-48.

[50] Sura 4, 38. *The Koran* tr. by George Sale (9 ed., London, 1923), p. 64. Cf. also Sura 2, 172, *ed. cit.*, p. 27.

[51] Sura 9, 73, *ed. cit.*, p. 147. Cf. also Sura 40, 40, p. 148.

[52] Sura 4, 2, *ed. cit.*, p. 59.

[53] Cf. Reuben Levy, *Introduction to the Sociology of Islam* I, (London, 1931), p .172.

[54] Sura 4, 29, *ed. cit.*, p. 63.

[55] Sura 24, 2, *ed. cit.*, p. 287. Those who cast imputations of adultery on chaste women and then do not bring four witnesses, scourge them with eighty stripes. The same four witnesses are demanded in the case of fornication; Sura 4, 19, p. 61.

[56] Sura 33, 35, *ed. cit.*, p. 346.

[57] Sura 24, 30, *ed. cit.*, p. 290.

[58] Sura 24, 31, *ed. cit.*, p. 29

On the other hand, instances of sexual irregularities are frequent in the poems and literature of the Arabs. It may be that there impurity and obscenity are deliberate for the delight and interest of the hearer and reader.[61]

Sexual intercourse among the Muslims was regarded in just the same way as other natural functions of the body. Satisfaction of the instincts is encouraged when the parties are lawful one to the other. *Hadith*, the sayings of the Prophet conveyed to man, declared that the best of the Muslim community is he who contracts most marriages: *Marie-toi reprit Ibn-'Abbas, car le meilleur de notre nation est celui qui a eu le plus de femmes.*[62] Mohammed laid stress on the necessity of marriage: *O jeunes gens, celui d'entre vous qui est capable d'entrer en ménage doit se marier;*[63] and again: *O jeunes gens, que ceux d'entre vous qui ont de quoi entrer en ménage se marient. Cela est plus décent et plus conforme à la pudeur.*[64] Celibacy was expressly forbidden and is against the *sunna*, the rule or mode of life of the Prophet or approved by him:

> Sa'id - ben - El - Mosoyyab a entendu Sa'd - ben - Abou - Ouaqqas dire: L'Envoyé de Dieu repoussa le désir exprimé par 'Otsman-ben-Madz'oun de faire voeu de chasteté. S'il l'y avait autorisé, nous aurions été (en quelque sorte) châtrés. Abdallah (-ben-Mas'oud) a dit: Nous étions en expédition avec l'Envoyé de Dieu et nous en possédions rien. Faut-il nous faire châtrer? demandâmes-nous? Il nous défendit de le faire. Plus tard, il toléra que nous épousions une femme à condition de la vêtir, et ensuite il nous récita ce passage du Coran:[64a] O vous qui croyez, ne vous interdisez pas les plaisirs que Dieu vous a déclarés licites. N'allez pas au delà (de mes prescriptions), car Dieu n'aime pas ceux qui font des excès de zèle.[65]

Celibacy except among the Sufis would appear to be unknown.[66] Extra-marital intercourse was lawful only in concubinage. The question of fornication apparently does not arise. There does not seem to be a specific word for it.[67]

It is Fahmy's thesis that in spite of Mohammed's intention to ameliorate the condition and status of women, Islam degraded her and paralyzed her activity.[68]

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[59] Sura 17, 24, *ed. cit.*, p. 230.

[60] Sura 5, 14-15, *ed. cit.*, p. 82.

[61] Fahmy attributes the erotic elements in Islamic literature to the social influences that contributed to the degradation of women, especially that of seclusion. The poets were forced to sing of and describe not the women they knew and saw but the women of their imaginations. Cf. *La Condition de la femme*, pp. 160-162: Et la poésie qui chante la femme s'abaissa jusqu' à une littérature réaliste et cynique, qui ne connaît plus que la femme physique, et qui l'analyse et la décrit avec une patience minutieuse, p. 161.

[62] El-Bokhari, *Les Traditions islamiques* LXVII, 4, tr. O. Houdas, III (Paris, 1908), p. 546.

[63] El-Bokhari, LXVII, 2, *ed. cit.*, p. 545.

[64] El-Bokhari, LXVII, 3, *ed. cit.*, pp. 545-546. Cf. also, *The Religion of Islam*, Maulana Muhammad Ali (Lahore, 1936), p. 602.

[64a] Sura 5, 89, *ed. cit.*, p. 93.

[65] El-Bokhari, LXVII, 8, *ed. cit.*, pp. 547-548.

[66] Cf. Reuben Levy, *Introduction to the Sociology of Islam* II, p. 130.

[67] Cf. Gertrude Stern, *Marriage in Early Islam* (London, 1939), p. 94.

[68] Ainsi, toute mineur qu'elle fût devant l'autorité de l'homme, l'ancienne femme arabe avait la faculté d'avoir une personnalité qui bénéficiait de tout ce qu'elle pouvait puiser dans le milieu social où elle vivait. Mahomet eût beau vouloir relever, en théorie, la condition du sexe dont les charmes ont agi si profondément sur sa sensibilité poétique; en dépit de ses intentions, l'Islam la dégrada. Il les a protégées contre l'agression de l'homme, mais il les a étouffées en rendant difficile l'échange entre elle et la société qui les entoure, et par là il leur a ôté les moyens mêmes de profiter de cette protection. Mansour Fahmy, *op. cit.*,

This it accomplished by its laws and institutions. It subjected her to theocratic laws, strict and immutable, in contrast to the more or less benign direction of a father or husband.[69] It secluded her from social activity and from masculine society and limited the free wife to family life and to the home.[70] It sharply demarked free women and slaves, wife and concubine; it formed two castes of women sharply distinguished by their occupations, ways of life and by the considerations with which they were surrounded.[71] The slave girls, in theory unlimited in number, were for the pleasure and use, advantage and entertainment of their masters. They were easily attainable and over them the master had the *jus utendi et abutendi*.[72]

Neither does Avicenna's teaching on human love reflect the doctrine of Sufism with which his name has been closely connected.[73] Within its various sects, Sufism aimed at contact with the divine. At first orthodox and quietist in character, by the ninth century it had acquired the added note of pantheism, union with God through knowledge and love, a union wherein self died to live in Him.[74] The doctrine of deification reached its highest development in the teaching of al-Hallaj martyed for his pantheistic doctrine in 922. He taught that man's highest happiness, his beatitude, consisted in union and identification with God and that man's highest activity was to be found in desire for it and in its accomplishment.[75] In contrast, the orthodox Sufi, forbidden by law to love the incomprehensible and inaccessible God, contented himself with striving to rid himself of the exigencies of this life by asceticism in order to devote himself to prayer and to contemplation. It was the renouncing of all that this world had to offer to attain the paradise promised to the true believer. The pantheistic Sufi, on the other hand, was a mystic as well. He renounced all, too, not for the sake of a future reward but for the sake of present absorption in God.[76] With him, asceticism and positive religion were relegated to a lower plane; he needed them for what might be called the purgative stage in his ascent through the various states[77] to that of permanent union with the divinity.[78]

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p. 10. The very opposite view is held and expressed by Ameer Ali, *The Spirit of Islam* (London, 1922) in his chapter on the Status of Women in Islam, pp. 222-257, especially p. 255.

[69] Mansour Fahmy, *op. cit.*, p. 7.

[70] Facilité du divorce, mariage pour motifs politiques, goût du concubinat, réclusion de jour en jour aggravée des femmes libres, toutes les causes avaient fatalement exercé l'influence la plus fâcheuse sur la femme. Les femmes libres dédaignées étaient les victimes fatales de la préférence qu'on marquait pour les concubines. Mansour Fahmy, *op. cit.*, pp. 110-111.

[71] Mansour Fahmy, *op. cit.*, pp. 88-89. Cf. also Wacyf Boutros Ghali, *La Tradition chevaleresque des Arabes* (Paris, 1919), pp. 128-129. On peut distinguer dès lors deux catégories de femmes: l'épouse, moule à fabriquer des enfants; l'esclave, instrument de plaisir, ornement du harem, p. 128.

[72] On est arrivé à un état de moeurs, où, mise à part les femmes des classes pauvres, il existe deux catégories de femmes: les unes tenues à l'écart et éloignées du commerce avec les hommes, à l'exception des proches parents; les autres, mêlées à la société des hommes, présentes aux banquets où se réunissent les amis. Les premières, souvent moins instruites, moins intéressantes, que les secondes, ce sont les épouses, qui ne se montrent que dans certains cas réglés par les lois et les moeurs; les secondes, qui charment la société par leur presence, leurs chants, leur talent de diseuses et de musiciens, ce sont les esclaves. La société Abbaside rappelle sur ce point la société de la Grèce antique. Mansour Fahmy, *op. cit.*, pp. 114-115.

[73] Cf. R. A. Nicholson, *Studies in Islamic Mysticism* (Cambridge, 1921), p. 42.

[74] Cf. Louis Massignon, *The Encyclopedia of Islam* IV^2 (*London*, 1929), *art.* Tasawwuf, pp. 681-682.

[75] An analysis of his mystical and dogmatic theology is given by Louis Massignon in *La Passion d'Al-Hallaj*, pp. 464-771.

[76] Cf. *The Awarifu-l-ma'arif, written in the thirteenth century by Shaikh Shahabu-d-Din Umar bin Muhammad-i-Sahrwardi*, tr. by H. Wilberforce Clarke (Calcutta, 1891), p. 145.

[77] Cf. the description and enumeration of the various stages in *The Kashf Al-Mahjub, the Oldest Persian Treatise on Sufism by Ali b. 'Uthman al-Jullabi al-Hujwiri* tr. by R. A. Nicholson (London, 1911, Gibb Memorial Volume XVII), pp. 267-420; *The Doctrine of the Sufis* (*Kitab al-Ta'arruf limadhhab ahl al-Tasawwuf*) tr. by A. J. Arberry (Cambridge, 1935), pp. 78-79.

[78] Cf. R. A. Nicholson, *Studies in Islamic Mysticism* (Cambridge, 1921), p. 63. Chapter I, pp. 1-76, gives an excellent picture of the early life, conversion to Sufism, holiness, career as head of a Sufi convent, sayings and miracles of Abu Said Abi'l-Khayr, 967-1049.

Therefore, the Sufi, both orthodox and pantheistic, laid great stress on the ascetic life.[79] For the former, it was, as it were, an end in itself; for the latter, it was but the preliminary for union with God wherein the duality of the Creator and creature is lost.

The practical attitude of Sufism towards marriage and towards women is set forth in the *Kashf Al-Mahjub*, the oldest Persian treatise on Sufism.[80] Although marriage is allowed to the Sufi who is not a recluse and who mingles in the world, that is in the nature of a concession to provide companionship and to afford the weak an occasion to avoid what is unlawful. 'Sufism was founded on celibacy'.[81] Moreover marriage is not the proper means of removing lust or the temptation towards it. Sensuality is eradicated, rather, by self-restraint and by the love of God Hence, it is the celibates who are the most excellent Sufis[82] and to live that life the rule is laid down that he guard over his senses, over his thoughts and desires and that he restrain the motions of his lower soul: 'He must not see what it is improper to see or think what it is improper to think, and he must quench the flames of lust by hunger and guard his heart from this world and from preoccupation with phenomena, and he must not call the desire of his lower soul "knowledge" or "inspiration", and he must not make the wiles of Satan a pretext (for sin). If he acts thus he will be approved by Sufism'.[83]

The Sufi attitude towards relations between the sexes outside of marriage, especially the morality of looks and touches on the opposite sex, emerges quite clearly from the author's rule set forth on the hearing of poetry. Such looks and touches are absolutely to be avoided on whatever pretext. Rigid, absolute purity is demanded in that connection both on legal and religious grounds: 'Some declare that it is unlawful to listen to any poetry whatever . . . Some, on the contrary, hold that all poetry is lawful, and spend their time in listening to love-songs and the descriptions of the face and the hair and mole of the beloved . . . Just as it is unlawful and forbidden to look at or touch a beautiful object which is a source of evil, so it is unlawful and forbidden to listen to that object, or similarly, to hear the description of it. Those who regard such hearing as absolutely lawful must also regard looking and touching as lawful, which is infidelity and heresy. If one say, "I hear only God and seek only God in eye and cheek and mole and curl" it follows that another may look at a cheek and mole and say that he sees and seeks God alone, because both eye and ear are sources of admonition and knowledge; then another may say that in touching a person whose description it is thought allowable to hear and whom it is thought allowable to behold, he, too, is only seeking God since one sense is no better adapted than another to apprehend a reality; then the whole religious law is made null and void, and the Apostle's saying that the eyes commit fornication loses all its force, and the blame of touching persons with whom marriage may legally be contracted is removed, and the ordinances of religion fall to the ground'.[84]

The reason for the immorality of such looks and touches rests on the nature of love. It is defined as the love of like towards like, a desire instigated by the lower soul and which seeks the essence of the beloved object by means of sexual intercourse.[85] There was nothing platonic, nothing of the conception of love as a union of hearts and minds, nothing of the nature of love as found among the *Banou Odhrah*, in their conception of it. It is a passion, an attribute of the lower soul which is the source and principle of evil.[86] Desire of pleasure and lust, human love, is the most manifest passion of the lower soul and is served and inflamed by the senses: 'The lust of the eyes is sight, that of the ear is hearing, that of the nose is smell, that of the tongue is speech, that of the body is touch and that of the mind is thought'.[87] Such passions are veils that separate one from the divine and are false guides that lead to hell. Man is commanded to resist them: 'It behooves the seeker of God to spend his whole life, day and night, in ridding himself of these incitements to passion which show themselves through the senses, and to pray God to make him such that this desire will be removed from his inward nature, since whatever is afflicted with lust is veiled from all spiritual things'.[88]

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[79] Cf. Ignaz Goldziher, *Le Dogme et la foi de l'Islam*, tr. Felix Arin (Paris, 1920), chap. IV, *Ascetisme et Sufisme*, pp. 111-155.

[80] *The Kashf Al-Mahjub, the Oldest Persian Treatise on Sufism by Ali b. 'Uthman al-Jullabi al-Hujwiri*, tr. R. A. Nicholson (London, 1911, Gibb Memorial Volume XVII), chap. XXIII, *The Uncovering of the Ninth Veil*, pp. 360-366. The object of the author is, as he tells us, to set forth a complete system of Sufism, not to put together a great number of sayings by different Shaykhs but to discuss and expound the doctrines and practices of the Sufis. (p. xx). The author died between 1072-1076.

[81] *Op. cit.*, p. 364.

[82] Cf. *op. cit.*, p. 363.

[83] *Op. cit.*, p. 366.

[84] *Op. cit.*, pp. 397-398.

It was, nevertheless, orthodox Sufism that gave rise to the conception of chaste love that the Zahirite poet Ibn Dawoud taught in his *Kitab al-Zahrah* (*The Book of the Flower*).[89] He was one of the foremost jurists and poets of Bagdad and died in 909. The son of the founder of the Zahirite school of Law, he succeeded him as its head. This school adhered to the letter of the Law and to the exterior meaning of the *Koran* and *Sunna* and took its name from the word *zahir* meaning exterior. It forbade inquiry into the meaning of a law, forbade the extension of a law or regulation by analogy from the individual to a class. It accepted utterances about God without going into any exegesis and refused to weaken the words of religious sources by parallels from passages in pagan poets.[90] For the Zahirites there was no love of God since love implies union; the God revealed by the *Koran* is transcendent, incomprehensible and inaccessible. The chasm that separates the creature and the Creator is unbridgable.[91] The only love that can exist for Ibn Dawoud is human love since there can be no divine love. Thus, in his *Kitab al-Zahrah* he is giving expression to the highest type of love possible to man,—renunciation of lovers whereby their mutual desire is perpetuated.[92] It is utterly devoid of the sensual and is wholly an intellectual affinity, the privilege of refined and pure souls.[93] In it the lower soul is completely repressed. This conception of pure love is in reality an inversion of the divine love of the Sufis and Massignon sees in it the first systematizing of Platonic Love,—*une déviation raffinée de l'idéalisme*.[94] Forbidden to love God, human love is not the soaring of the soul to Him, but it is a blind force of the physical order common to all men. The role of the chosen few is to suffer it without yielding to it.[95] Purity and chastity were demanded by religious law and custom and especially to perpetuate mutual desire, the noblest form of love:

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[85] Cf. *op. cit.*, p. 308.

[86] *Op. cit.*, p. 196.

[87] Cf. *op. cit.*, pp. 207-209.

[88] *Op. cit.*, p. 209.

[89] Ed. A. R. Nykl and I. Tuqan, (University of Chicago Press, 1932).

[90] Cf. R. Strothmann. *Encyclopedia of Islam* IV^2 (London, 1929), *art.* al-Zahiriya, pp. 1192-1193. Cf., also, the work of Ignaz Goldziher, *Die Zahiriten, ihr Lehr-system und ihre Geschichte* (Leipzig, 1884).

[91] Cf. Carra de Vaux, *Avicenne* (Paris, 1900), chapter the first, on *La Théodicée du Coran* and especially p. 6: Dieu est à ses yeux celui qui ne peut être atteint, et qui atteint tout, qui n'a aucune des infirmités du corp, dont la nature est supérieure à celle de l'homme et de toute chose, qui est si élevé au-dessus du monde qu'il ne peut pas même être vu.

[92] Cf. the chaste love of the *Banou Odhrah*, p. 186. These conceptions still fall short of the troubadour conception of love; cf. A. J. Denomy 'An Inquiry into the Origins of Courtly Love', p. 234.

[93] Cf. Louis Massignon, *La Passion d'Al-Hallaj*, p. 171. The purity and disinterestedness of love appears from the titles of certain chapters of the *Kitab al-Zahrah*: Chap. 2—L'intelligence, dans l'amour, est la captive, sur eux deux le désir règne en maître; chap. 8—Où il y a la grace qui séduit, qu'il y ait la chasteté; chap. 45—En amour, qui n'est pas attiré par l'intérêt, ne sera pas repoussé par la reprimande; chap. 48—Qui aime sans rien espérer, n' a plus à compter que sur soi. Quoted from Louis Massignon, *op. cit.*, pp. 171-172. Cf. also A. R. Nykl, *The Dove's Neck-Ring*, pp. cv-cvi.

[94] Louis Massignon, *op. cit.*, p. 176.

> Quand bien même la chasteté des amants, leur éloignement pour les souillures, et le soin de leur pureté ne seraient pas protégés par les préceptes des lois religieuses et le préjugé des coutumes,—certes, ce serait encore le devoir de chacun de rester chaste: afin d'éterniser le désir qui le possède avec le désir qu'il inspire.[96]

The attitude of the unorthodox and pantheistic Sufi towards absolute purity and chastity even to the forbidding of the pleasures of sight is illustrated by a story related by Mousa Ibn Abi al Baydawi concerning al-Hallaj:

> Je marchais derrière al Hosayn Ibn Mansour (al-Hallaj) dans les ruelles d'al Bayda, quand l'ombre d'une silhouette tomba sur lui du haut de l'une des terrasses, et relevant la tête, al Hosayn jeta son regard sur une belle femme. Alors il se retourna vers moi et me dit: 'Tu verras, le tort causé par mon regard retombera sur moi, dusses-tu attendre longtemps pour cela'. Et le jour où l'on le suspendit au gibet, j'étais dans la foule et je pleurais. Mais il jeta son regard sur moi, du haut de l'échafaud, et il me dit: 'Mousa, celui qui redressait la tête vers ce que tu as vu, et qui s'est élevé vers ce qui lui était interdit, doit être élevé, maintenant, au-dessus de la foule ainsi'.[97]

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Avicenna's mystical writings are concerned with the problem of the soul's reintegration into the divine world whence it came. Immortal and divine, the soul is linked to the body, involved in matter, inert and evil. During its sojourn in the world and in that state, it must work out its eternal beatitude.[1] As an emanation of the Agent Intelligence, the soul is bound by natural affection to the particular body to which it gives being. As a solitary, self-sufficient substance, it finds itself situated between two worlds, the spiritual world of intelligibility and the material world of creation.[2] To each of these worlds the soul has an aptitude, being related to the higher world by the speculative intellect and to the lower by the active intellect. The active intellect is the medium between the soul and the body and gives the soul an aptitude for dealing with the world of sense. It is the power by which the soul gains its knowledge of the particular objects of the universe. The function of the contemplative intellect, on the other hand, is to apprehend universal abstract form or ideas, both those already free from matter and those which it must disengage from all ties with matter. It is the medium between the soul and the intelligible world of forms and through it the soul is acted upon by that world. Through it the soul has an aptitude towards a perfection dispensing it from the need of the bodily instruments of thought. Thus, the soul has, as it were, two faces: one turned on high towards the Intelligence whence it receives ideas or forms and the other turned towards the body on which it acts and whose services it uses in many ways.[3] For the soul to submit to the governance of its lower face directed towards its material body and material things results in its misery and unhappiness. The soul's beatitude and perfection can only be found in its escape or ascent from this material evil world into the intelligible world that has engendered it.

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[95] Bien loin de voir dans l'amour, l'élan de l'âme vers Dieu, le désir supérieur de l'esprit, Ibn Dawoud en isola, avec un sens plus exact du ritualisme discipliné de l'Islam, tout le culte dû a Dieu. L'amour bien loin de nous unir à Lui, n'est qu'une fatalité aveugle, commune à tous les hommes,—le rôle de l'élite est de la subir sans y céder. Louis Massignon, *op. cit.*, p. 176.

[96] Quoted from Louis Massignon, *op. cit.*, p. 175. Cf. also the discussion between Sophia and Philo and Philo's demonstration of the identity of love and desire in Leone Ebreo's *Dialoghi d'Amore*, composed 1501-1502, ed. Santino Caramella (Bari, 1929), dialogo primo, pp. 5-58, tr. by F. Friedelberg-Seeley and Jean H. Barnes (London, 1937), pp. 3-64.

[97] Quoted from Louis Massignon, *La Passion d'Al-Hallaj*, p. 15.

[1] For a fuller treatment of the teaching of the soul's emanation from the Agent Intelligence and its ascent thereto, cf. Maur Burbach, *The Theory of Beatiude in Latin-Arabian Philosophy and its Initial Impact on Christian Thought* (Toronto, Thesis, 1944), pp. 53-92; A. J. Denomy, 'An Inquiry into the Origins of Courtly Love', *Mediaeval Studies* VI (1944), pp. 246-256.

[2] Anima humana, sicut postea scies, est una substantia habens comparationem ad duo, quorum unum est supra eam, et alterum infra eam, sed secundum unumquodque istorum habet vim per quam ordinatur habitudo quae est inter ipsam et illud. *De Anima'* I, 5, ed. *Avicenne perhypatetici philosophi et medicorum facile primi opera in lucem redacta: Logyca, Sufficientia, De celo et mundo, De anima, De animalibus, De intelligentiis, Alpharabius de intelligentiis, Philosophia prima* (*Venice*, 1508), fol. 5c.

The happiness and perfection of the human soul is its assimilation or union with the Agent Intelligence, the ruler of the tenth and last celestial sphere in the hierarchical order of Intelligences emanated from God.[4] Union with this separated representative of the intelligible world opens up to the soul a new world, the world of intelligence. By it the soul has association with the true universe and acquires the form which converts it by successive stages into the universe itself. This union gives the soul contact with absolute beauty, absolute goodness and true elegance.[5] The aptitude of the soul for such union is actualized by learning, knowledge and science.[6] It is achieved by an emanation from the Agent Intelligence, an illumination by which the Agent Intelligence which contains the models and principles of the intelligible world, confers the forms on the soul. Just as the sun is actually visible in itself and makes actually visible what was visible only *in potentia*, so the Agent Intelligence is actually intelligible in itself and makes intelligible what was before intelligible only *in potentia*.[7]

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[3] Haec autem virtus activa est virtus quam habet anima propter debitum quod debet ei quod est infra eam, scilicet corpus ad regendum aliquid, sed virtus contemplativa est illa virtus quam habet anima propter debitum quod debet ei quod est supra ipsam ut patiatur ab eo et perficiat per illud et recipiat ab illo tanquam anima nostra habeat duas facies, faciem scilicet deorsum ad corpus quam oportet nullatenus recipere aliquam effectionem generis debiti naturae corporis; et aliam faciem sursum versus principia altissima quam oportet semper recipere aliquid ab eo quod est illic et affici ab illo. *Op. cit.* I, 5, *ed. cit.*, 5c.

[4] In this Avicenna departs from unorthodox and pantheistic Sufism; he sought union not with God but with an emanated substance separate from God, that is, the Agent Intelligence. God is not identified with the celestial spheres but is necessary, absolutely simple and eternal in Himself. Cf. *Averroi Destructio Destructionum Philosophiae Algazelis*. Disp. X, ed. Venetiis apud Juntas 1573, 104M-105A; S. Munk, *Mélanges de philosophie juive et arabe* (Paris, 1927), pp. 358-360.

[5] Dico igitur quod sua perfectio animae rationalis est ut fiat saeculum intelligibile et describatur in ea forma totius, et ordo intellectus in toto, et bonitas fluens in esse, et ut incipiens a principio totius procedat ad substantias excellentiores spiritales absolute, et deinde ad spiritales pendentes aliquo modo ex corporibus, et deinde ad animas moventes corpora, et postea ad corpora caelestia, et deinde ut haec omnia sunt descripta in anima secundum dispositiones et vires eorum quousque perficiatur in ea dispositio esse universitatis, et sic transeat in saeculum intellectum instar esse totius mundi, cernens id quod est pulchritudo absolute, et bonitas absolute, et decor verus fiat unum cum ea insculpta exemplo ejus et dispositione ejus et incedens secundum viam ejus conversa in similitudinem substantiae ejus. *Metaphysica* IX, 7, *ed. cit.*, 107*a*.

[6] Thus Metaphysics is called by Avicenna the divine science. Cf. A. M. Goichon, *La Distinction de l'essence et de l'existence d'après Ibn Sina* (Paris, 1937), p. 5.

[7] Cf. *De Anima* V, 5, ed. cit., 25b.

While the soul is bound in union with the body, it must exercise the operations which belong to the active intellect,—the operations of its lower face,—so that the contemplative intellect,—its face turned on high,—may be perfected, sanctified and cleansed.[8] This perfection, sanctification and cleansing is, in reality, the result of the acquisition of a desire towards union through speculative knowledge. This disposition or desire for union is acquired through the apprehension of the quiddity of the universe and this is possible only to those who have acquired already a desire for perfection through intellectual virtue. The soul is rendered apt for an emanation into it of an abstraction from the Agent Intelligence by cognition. The soul must be disposed to receive union by that disposition which consists in a desire for it necessarily consequent on a demonstrative knowledge of the nature of the soul, the order in the universe and its relation to the universal order. The more perfect this speculative knowledge the more perfect will be the soul's desire and aptitude for union.[9] When this aptitude or disposition has been perfected, then the soul can turn to the Agent Intelligence at will.[10]

The role of learning in the ascent of the soul to the Agent Intelligence is well illustrated in Avicenna's mystical *Treatise on the Bird.*[11] As he tells us, it is an account of the condition of his own soul. It relates how a band of hunters went forth to snare birds. A good number of birds fell into their nets. Among the birds so trapped by the allure of the hunters' bait was the author. At first the birds bore hardly their misfortune and the loss of their freedom in their chains and cages. Little by little they grew accustomed to their imprisonment. In time, a few succeeded in escaping. The sight of their free flight recalled to the author his former condition and his present sad state. He asked the freed ones to teach him how to escape too. After some hesitation, these did offer their help to their unhappy companion, freed him and showed him the sure way of escape from his captivity. In their flight homewards, they come into view of eight high mountains and after great and persistent efforts, they succeed in surmounting six of them. After resting some time, they gained the summit of the seventh height, a land of beauty and plenty. Refreshed, they succeed in reaching the foot of the eighth mountain whose peak is lost in the clouds and which is peopled by marvellously colored birds with whom they make friends. Through their efforts they gain access to the palace of the Great King close by. In their audience with Him, they describe their miserable condition aggravated by the remnants of their chains still attached to their legs. Then the Great King promises to send a messenger who shall order their oppressors to strike off their chains. The messenger is the angel of death. Avicenna describes the Great King:

> Lui, il est l'être représentant l'union de tout ce que vous pouvez imaginer de *beauté* la plus parfaite, où rien ne se trouve de laid, et de *perfection* la plus consommée, où rien ne manque. Toute perfection réelle appartient à son être et tout manque, même pour l'imagination, en est éloigné; sa figure représente la beauté et sa main la bonté. Celui qui le sert fidèlement,

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[8] Obligatio enim animae cum corpore, sicut postea adhuc declarabitur, est propter hoc ut perficiatur intellectus contemplativus et sanctificetur et mundetur. *De Anima* I, 4, *ed. cit.*, 6*a*.

[9] Speculator quanto plus addiderit speculationis, tanto plus addetur aptitudo ad felicitatem. *Metaphysica* IX, 7, *ed. cit.*, 107*c*; cf. also *ibid.*, 107*b*.

[10] Cf. *De Anima* V, 6, *ed. cit.*, 26*b*.

[11] *L'Oiseau, traité mystique d'Avicenne, rendu en français et expliqué selon le commentaire persan de Sâwedjî*, M. A. F. Mehren, *Traités mystiques d'Abou Alî al-Hosain b. Abdallah b. Sînâ ou d'Avicenne*, IIe fasc. (Leyden, 1891), pp. 27-32.

> obtiendra la plus grande félicité, mais celui qui l'abandonne, sera perdu dans ce monde et dans l'éternité.[12]

The allegory is explained in a commentary by a certain Omar b. Sahlân as-Sâwedji.[13] The soul, originating from the fulness of the divinity, united to the body composed of material elements, must work out its development in this world and so attain eternal beatitude. During its sojourn on earth, it feels itself a captive in its body and it longs to return to its homeland. The soul of the author has not been able to resist the seductions of this life and has become deeply entrapped in the pleasures of the world and his body. The desire of the soul to possess the separated substances or the intelligences is compared to the flight of a bird, the heavens signify the highest spheres and the home of the intelligibles to which the soul tries to rise. The soul is often impeded by the bonds of the body in its efforts to rise and is halted at the inferior spheres, that is, it is plunged in the study of the natural sciences and mathematics, called the lower and middle sciences, without being able to reach the sublime heights of metaphysics. Ordinarily the soul is held captive by its body and only rarely do some chosen souls succeed partially in acquiring a certain degree of rest. These are the masters of the sciences.

As the author sees the masters' flight from their cages, he remembers his own captivity and the desire of imitating them seizes upon him. He asks their aid but it is only after they are sufficiently convinced that he is ready to receive the grace of freedom and of knowledge do they show him the way. It is by reiterated efforts to subdue carnal passions. The first road to follow is the inferior and middle sciences symbolized by the seven summits which he wins by persistent efforts. The halt at the eighth mountain, the home of the intelligibles and of the souls of the celestial spheres, signifies that the acquisition of the supreme science depends on the reception of divine grace,—the invitation to the audience of the Great King. When little by little, he reaches that summit, he is invited to that audience. Death shall give him eternal happiness. In the meantime, only the force that has made him captive in this life, his animal soul, can grant him peace and rest by loosening the chains that bind him.

As it is clearly indicated in the allegory, the preparation of the soul in its ascent to the Agent Intelligence is largely a matter of metaphysics, the acquisition of speculative knowledge through the instrumentality of the body and its faculties. That felicity is attained by the rectitude of that part of the soul which is called practical.[14] Avicenna attaches great importance to the freeing of the soul from attachment to the material world and from the lure of corporal pleasures in its journey towards happiness.[15] A soul that forgets its perfection and origin and which seeks after bodily pleasures finds only misery and unhappiness. It is unaware of the glorious delight that is proper to its nature.[16]

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[12] *Ed. cit.*, p. 31.

[13] The commentary has been arranged by the editor and translator as notes to the body of the text.

[14] Dico etiam quod haec verissima felicitas non perficitur nisi propter rectitudinem illius partis animae quae est practica. *Meta.* IX, 7, *ed. cit.*, 107c.

[15] En verité, l'homme qui continue sa route en luttant contre la concupiscence et dont le pied n'a pas devié, est semblable à l'ange; mais, au contraire, celui-là est inférieur à la bête dont les forces n'ont pas suffi pour résister aux passions qui l'ont entraîné. *L'Oiseau, traité mystique d'Avicenne, ed. cit.*, p. 28.

[16] Sed quia nos in hoc nostro saeculo et nostro corpore dimersi sumus in multa turpia, ideo non sentimus illam delectationem cum apud nos fuerit aliquid de causis ejus sicut jam assignavimus in aliqua de predictis radicibus, et ideo non inquirimus eam nec allicimur ad eam nisi prius deposuerimus a cervicibus nostris jugum voluptatis et irae et sorores earum et degustemus aliquid illius delectationis et

Only after the soul is prepared both by speculative knowledge and virtuous living and has attained its beatitude will it comprehend the superiority of spiritual happiness over the delights of the body and of the world.[17]

Corporal pleasure is revealed by religion. Bodily felicity in this life and in the next is taught by the law and revealed by Mohammed. That there is a spiritual happiness is arrived at and demonstrated by reason; the law merely approves of it. Yet, wise theologians have always concerned themselves with the pursuit of spiritual happiness rather than that of the body. Even though these latter pleasures are allowed them, they consider them unworthy of comparison with that beatitude which is found in union with the first truth.[18] There is no comparison possible between the perfection and happiness of the rational soul and those proper to the other faculties of man any more than there is between the eternal and the temporal, or between the superficial junction of sensible things and the substantial union wherein Intelligence, the knowing subject and the known object are one.[19]

Failure to perceive and to be drawn to pursue spiritual happiness is to be attributed to the yoke of the passions to which the rational soul submits only too frequently while in union with its body. Preoccupation with such bodily and material pleasures results in its oblivion of its own proper perfection and in the paralysis of its activity; it results in yearning for and in seeking delights which are not proper to it and to its perfection. Thence results its misery and unhappiness.[20] Therefore, besides that disposition that disposes the soul to apprehend the *quidditas universitatis*, that is, speculative knowledge, there

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sic fortasse imaginabimus de illa parum aliquid tanquam per interpositum. *Ibid., ed. cit.,* 107*a*.

[17] Sed praecipue cum solutae fuerint quaestiones et revelata sibi fuerint inquisita nobilia, tunc comparatio hujus nostrae delectationis ad illam nostram delectationem erit sicut comparatio delectationis sensibilis quae est odorandi odores gustatorum delectabilium ad delectationem comedendi ea sed idem incomparabiliter est longius ab hoc. *Ibid., ed. cit.,* 107*a*.

[18] Oportet autem te scire quod promissio alia est quae fide recipitur, quia non est via ad probandum eam nisi credendo testimonio prophetae, sicut illa quae est de eo quod habebit corpus apud resurrectionem. Tu autem jam scis delectationes corporum et gaudia quod sunt. Lex enim nostra quam dedit Mahometh ostendit dispositionem felicitatis et miseriae quae sunt secundum corpus. Et alia est promissio quae apprehenditur intellectu et argumentatione demonstrativa, et prophetia approbat. Et haec est felicitas et miseria animarum postquam sunt exutae a corporibus suis, quae probatur argumentationibus quamvis nostrae aestimationes debiles sint ad imaginandum eas nunc propter causas quas ego ostendam. Sapientibus vero theologis multo major cupiditas fuit ad consequendum hanc felicitatem quam felicitatem corporum quae, quamvis daretur eis, non tamen attenderunt eam nec appretiati sunt eam comparatione hujus felicitatis quae est conjuncta primae veritatis sicut paulo post ostendam. *Meta.* IX, 7, *ed. cit.,* 106*d*.

[19] Sed hoc quomodo poterit comparari perfectionibus amabilibus aliarum virium cum turpe sit dicere ejus ordinem esse nobiliorem vel perfectiorem istis? Quoniam istorum ad illam nulla omnino comparatio est nec in excellentia nec in perfectione nec in multitudine nec in ceteris quibus perficitur delectatio apprehendentium de quibus supra diximus. Sed diuturnitas eternitatis quomodo potest comparari diuturnitati variabili corruptibili vel quae erit dispositio ejus cujus applicatio est contingentia superficierum comparatione ejus quod infunditur in substantiam sui receptibilis ita ut sit ipsum idem sine discretione quoniam intelligentia et intelligens et intellectum sunt unum vel pene unum? Sed quod apprehensum a seipso sit perfectius quam hoc, hoc ideo est occultum . . . quomodo igitur haec apprehensio poterit comparari illi apprehensioni vel quomodo haec delectatio poterit comparari delectationi sensibili et bestiali et irascibili. *Ibid., ed. cit.,* 107*a*.

[20] Sed postquam separati fuerimus a corpore, si anima nostra dum fuit in corpore animadvertit suam perfectionem sibi amabilem quam non est adepta cum ipsa naturaliter tenderet ad eam, intelligit quod erat in effectu, sed sua occupatio cum corpore, sicut diximus, faciebat eam oblivisci simplicius et ejus quod amare debet sicut infirmus qui obliviscitur ejus quod opus est restaurare pro eo quod resolvitur, de eo obliviscitur delectari in dulci et concupiscere et inclinatur ad concupiscendum quae sunt vere adhominabilia; et tunc accidunt animae dolor et tristitia propter amissionem ejus sicut accidit delectatio quam fecimus debere esse et probavimus magnitudinem sui ordinis. Igitur illud est infelicitas et labor . . . Igitur tunc erit quasi paralisis quam assignavimus in praedictis, quam scilicet, agit in eo ignis et glacies sed materia quae est infecta in superficie sensus prohibet sentire eam et perpendere. *Ibid., ed. cit.,* 107*b*.

is required moral virtue. Avicenna calls moral virtue *habitus mediocritatis* proper to man situated, as he is, at the confluence of two worlds, the material and the spiritual. It consists in choosing the mean between extremes and is found in both the animal and rational parts of the soul: in the animal part when it has acquired the disposition of submission to the rational part; in the rational part when it has acquired the aptitude to receive and suffer the emanation of the Agent Intelligence which will effect its union with it. If the animal powers are excessively strong, they dominate the rational part, bind the soul too closely to the body, render it subject to the body and so paralyze its perception, desire for and achievement of its beatitude. The *habitus mediocritatis* is, therefore, a liberation of man from dispositions that tend to subject him unduly to his body, a habit which preserves the soul according to its nature, that is, to tend upwards and avoid the inclination downwards to its material body and to the world.[21] The powers of the lower soul must be governed by moral virtue which sets them in proper relation to the higher rational soul.

A second mystical treatise, *The Mystical Allegory Hay Ben Yaqzân*, will serve to fix Avicenna's specific teaching on the way that the soul must follow in this life.[22] The author tells how in the company of his friends he met an old man who, in spite of his advanced years, retained a youthful vigor. Giving way to an irresistible urge, he addresses the old man, inquires his name, his country, his occupation, general views,—in short his whole present situation. The old man answers: 'As regards my name and family, I am called Hay b. Yaqzân and my native city is Jerusalem. As regards my employment, it is to wander over all the regions of the earth, ever following the directions given me by my father. He has given me the keys to all the sciences and has guided me over all paths of every country until I have reached the utmost confines of the universe'.[23] The hidden meaning of all this is to the effect that Avicenna, during the sojourn of his soul in its body, experienced the desire, under the lead of his imagination and of his interior and exterior senses, to examine the intelligibles. Plunged in meditation, he succeeded in contacting the Agent Intelligence. Emboldened by the homogeneity of their natures, he dared to address it and to submit his senses to the divine grace emanating from its being. Thus disposed, he began to examine its sublime nature. The Agent Intelligence is called *Hay*, the Living One, *ben Yaqzân*, the Son of the Vigilant One. Its natal city is Jerusalem, void of all worldly defilements and its task is to travel over the regions of the highest Intelligences there to penetrate into the essence of the heavenly Father of All. To it the Father has given knowledge of all forms and has revealed the mystery of them by instantaneous intuition.

As they speak of the various sciences, they pass from those that are natural

[21] Dico igitur quod mores sunt habitus propter quem facile perveniunt ab anima aliqua actiones absque praemeditatione. Jam autem praeceptum est in libro de moribus ut teneatur mediocritas et acquiratur habitus universitatis vel mediocritatis. Habitus autem mediocritatis habet esse in virtute rationali et virtute animali, sed in virtute animali est cum acquiritur ei dispositio subjectionis. In virtute vero rationali est cum acquiritur ei dispositio aptitudinis et patiendi . . . Cum enim confortatur virtus animalis et acquiritur habitus dominandi, fit in anima rationali dispositio subjectionis et impressio passionis infligetur in anima rationali cujus natura est ponere animam nimis ligatam cum corpore et nimis affectam circa illud; habitus vero mediocritatis intelligitur esse liberatio hominis a dispositionibus subjectilibus qui conservat animam rationalem secundum naturam suam cum acquisitione dispositionis erigendi se et despiciendi hoc quod non est contrarium suae subtantiae, nec est inclinans ad eam ad partem corporis, sed a parte ejus. Mediocritas enim semper removet ab ea duo extrema. *Meta.* IX, 7, *ed. cit.*, 107c.

[22] *L'Allégorie mystique Hay Ben Yaqzân d'Avicenne anaïysée et en partie traduite*, ed. M. A. F. Mehren *Traités mystiques d'Abou Alî al-Hosain b. Abdallah* b. Sînâ *ou d'Avicenne*, Ier fasc. (Leyden, 1889), pp. 11-19.

[23] *Ed. cit.*, p. 11.

to physiognomy, that is, the science of logic by which are known hidden and distant things revealed by external manifestations. It is logic which frees a man from his nature and sensual inclinations. If he refuses its support, he is ruined, surrounded as he is by his evil companions. His closest one is his imagination.[24] Necessary though it is, it may be the source of error, of confusion, rich in falsity and futility, dangerous unless guided by divine grace and by a sure rule of conduct. His companion to the right is irascibility, impetuous as a burning fire; it can be controlled only with difficulty or repressed by skill. It is the same with his companion to the left,—carnal concupiscence. Soft and effeminate, its evil flows from its voracity and insatiable desire. Only death can free the soul permanently from these companions. In this life, since it is impossible to flee from them, they must be tamed and governed.

Avicenna prepares for his journey in company with the aged man. He is warned of its difficulties; it will be interrupted at times by his companions but he must never yield to their influence. If he does, he will have to forego the company and guardianship of his aged guide. They set forth, then, through the three parts of the universe,—the terrestrial world, the world of matter which lies to the West and the world of eternal forms towards the East. The frontiers to these lands are crossed only by those endowed with grace and who do not trust in their own powers. Entrance to them is facilitated by the cleansing waters of a spring,—logic and metaphysics. They pass through the dark, desolate and sterile world of matter to enter into the world of forms. There is creation such as it is known on earth. As they go eastwards, through the region of human forms, they see the sun rising between the two horns of Satan,—the flying horn and the walking horn,—that is, the immortal and immaterial soul flanked by its enemies. The flying horn signifies the intellectual faculties of the soul; the walking horn, the faculties and movements of the passions. The walking horn is divided into two parts: one in the form of a ferocious animal (irascibility) and the other, that of a gross animal (carnal concupiscence).

These two horns continually attack the human soul and trouble it. The part in the form of a ferocious animal of the walking horn tries to entrap man into evil actions, to injustice, violence and hatred, and embellishes such actions in his eyes. The other part in the form of a gross animal incessantly influences the soul by beautifying ugliness and baseness and exhorting the soul to submit to them. They never desist from their attacks until man is completely under their control. In this they are ably seconded by the evil spirits of the second, the flying horn, which causes man to reject all that he does not see with his own eyes and makes him admire nature and visible creation while blinding him to spiritual realities.

On their voyage through the world of forms, the travellers come to the region inhabited by the angelic beings of the terrestrial world, then that of the angels, the reasoning souls of men, and pass through the eternal abode of the souls of the celestial bodies. Beyond this realm, they arrive at their goal,—the abode of the intelligibles and their supreme King. The first rank of the intelligibles is held by the Father,—the Agent Intelligence. It is through it that emanate the commands and the words of the King to the other beings of creation. The King surpasses all in that, unlike the others who move and set other beings in motion, He is immobile and immovable, without origin and without end. His beauty and goodness are unfathomable and invisible because of their perfection. They are communicated to creatures in the measure that their faculties permit them to approach near to Him.

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[24] The store house of the particularized images acquired by the sense. Cf. *De Anima* V, 5, *ed. cit.*, 25*b*.

> Celui qui a joui de la moindre vue de sa beauté, restera enchaîné pour toujours; il arrive quelquefois que des hommes extraordinaires, qui se sont donnés à Lui et sont favorisés par sa grace, instruits du peu de valeur du monde périssable, lorsqu'ils y reviennent, n'y éprouvent pour le reste de leur vie que des regrets et un sentiment de détresse.[25]

With this brief sketch before us, it is possible now to set Avicenna's teaching on the love of external beauty in general and of human love in particular into the background of his philosophy and mysticism. In that context his *Treatise on Love*, and especially chapters four and five,[26] assumes some significance for this portion of our study, namely, a possible source of the troubadour conception of pure love. Its importance lies in this that Avicenna assigns to human love, the love of the sexes, a positive and contributory part in the ascent of the soul to divine love and union with the divine. Sufism teaches that such love, as a passion of the lower soul served and excited by the senses, is to be wholly resisted, that it is completely incompatible with man's highest good,—contact with the divine whether through meditation or through union with God. Self-restraint for them means the annihilation of the natural desires of the animal soul; opportunities of listening to the description of the beloved, of touching, of looking at the beauties of the opposite sex are to be avoided as incitements to passion. Desires, arising from such incitements, are to be suppressed on whatever pretext, even that of seeing the Good and the Beautiful in feminine goodness and beauty and of making use of this created goodness and beauty to rise to the uncreated goodness and beauty of God.[27]

Muslim philosophy had distinguished sharply between the animal and rational soul of man and had separated distinctly the orbits of their activity in natural and spiritual love. Man's destiny was to seek the highest beauty and this was solely the work of the rational soul. External beauty, though deriving from the beauty of the soul, belonged to nature and was the object of natural love. Natural love of external beauty had an end good in itself, that is, unification with the object loved, but that love remained an activity of the animal soul. Attraction to external beauty and love of it was regarded as an impediment and obstacle to the soul's ascent to the divine in so far as it turned the soul away from its real good, spiritual beauty. Therefore it was to be suppressed and mortified.[28] Avicenna, on the contrary, assigns to the lower soul a role of partnership with the rational soul whereby love of external beauty, even love of feminine beauty, is a pure love and serves as an aid in approaching the Pure Object of all love. The conditions demanded in this alliance are submission of the animal soul to the rational soul of man on the one hand, and the domination of the rational soul over the animal on the other. The powers of the lower soul must be governed by moral virtue and thus subjected and reduced, as he puts it, to the status of a tool of the higher soul.[29]

Avicenna first establishes the principle that 'no being is devoid of love' and that love pervades all being.[30] Every created being has a perfection specific to it and a corresponding love of that perfection as its particular good. This is necessary from the fact of its very existence and the wise order established by Providence. Particular love, or the natural disposition of a being towards what is proper to it, derives from the principle of general love innate in every created being of the Supreme Good from which ultimately emanates its being and perfection. Possessing as it does a certain particular perfection by reason of its existence, and not sufficient of itself to continue its perfecting, every created being has in itself a love of the Supreme Good to the end that, while pursuing the particular condition allotted to it, it rise to the acquisition of the general perfection it shares. Thus, simple, inanimate substances have an innate love towards their perfection. Matter, separated from form, has only virtual substantiality and to acquire existence it desires union with form; form, constitutive of substance, clings to its substratum, avoids what may separate them, adheres to its perfections and abandons its movement towards them only when it has acquired them; accidents ever seek a subject in which they may exist. Likewise, in the case of the vegetative forms or souls, there is an inborn specific love in them for the perfecting of their threefold faculties,— those of nutrition, growth and procreation,— in their desire for food, increase and self-reproduction.

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[25] *Ed. cit.*, p. 19.

[26] *A Treatise on Love by Ibn Sina*, trans. Emil Fackenheim, *infra*, pp. 216-222.

[27] Cf. *supra*, p. 193.

[28] Cf. Emil Fackenheim, *loc. cit.*, p. 209.

[29] Cf. Emil Fackenheim, *loc. cit.*, note 65.

[30] *Treatise on Love*, chap. 1, tr. Emil Fackenheim, *infra*, pp. 212-214.

The existence of an innate love in the animal soul is evident in its discrimination of what is pleasing and displeasing in external sense-perception, in its enjoyment of pleasant imaginations and its striving towards such through its internal sense faculties, and in its desire for mastery and avoidance of weakness in its irascible faculty. As regards the appetitive part of the animal soul, a distinction must be made between two sorts of love: there is a natural love, an inclination whose movement ceases only when its end is attained unless it is impeded by some natural force. This is the love inherent in the vegetative faculties. The second kind is spontaneous and voluntary, an inclination towards an object which is abandoned when a danger is perceived whose harmful effects would surpass the actual satisfaction. Sometimes these two kinds of love may be present in two different faculties that have the same end in view. Thus in the vegetative faculty, love of procreation is natural; in the appetitive animal faculty, it is spontaneous and voluntary although it may resemble the first type. In the animal the actions of the appetitive faculty are higher and more excellent than those of the vegetative faculty since they derive from a finer and more beautiful source, so much so that they are often accompanied by sense-perception. In the case of propagation of the species, the vegetative faculty even resembles the voluntary and spontanous love of the appetitive animal faculty in so far as divine Providence has imprinted in each individual, as representative of its species, a desire to propagate its like. In the case of the animal faculty, it is because the non-rational animal cannot grasp that specific aim from the universal truth that its voluntary love resembles the natural love of the vegetative faculty in the procreation of the individual.

What has been established is, as Avicenna points out,[31] preliminary to the subject with which he is principally concerned,— the love of rational creatures of both external and divine beauty. It is the former that vitally interests us. As an introduction to his main theme, the author prefaces four necessary principles. The first is that a faculty of the soul joined to a higher faculty by the very fact of its union gains in excellence and nobility. It is supported and strengthened, benefited and beautified by its alliance with the higher. Actions proceeding from the lower faculty in union with the higher surpass in quality and nobility those of its separated existence. Thus the rational faculty of the soul assists the animal faculty in its aims and uses its help to further its own aims. So the aims of the animal faculty are improved in quality and rank to such an extent that they become transformed and no longer subsist in their own accomplishment but purely in that of the faculty of reason. The faculties of the animal soul are, as it were, servants doing the bidding of the rational soul. When the end is achieved, as servants often do, they assume to themselves the accomplishment of the task whereas they have but carried out their master's plan and purpose.

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[31] What we have establshed in this chapter, as well as in the one preceding it, will be of assistance in the establishment of much of what is to follow in this treatise. *Treatise on Love*, Chap. IV, *infra*, p. 218.

Secondly, in this union of the lower with the higher, the animal soul loves and pursues sense objects which are more refined and more finely constituted. Actions which proceed from the animal soul alone become nobler and more elegant. For example, the rational faculty imposes on the appetitive sexual faculty something more than its essential aim of pleasure and procreation. It turns its instinct away from mere voluptuous gratification to an imitation of the First Cause by way of preservation of the human species. Actions of the animal soul result from this union which are similar to those of the pure rational faculty.

Thirdly, although worldly goods as such are sought after, it often happens that the pursuit of them interferes with the acquisition of a superior good. Wealth and sumptuous living, it is agreed, are to be eschewed in favor of liberality and munificence. So it is with those excesses of the animal soul, such as lust. In animals, these excesses are normal and fitting to their natures, but in man they are vices because of the harm they do to his rational faculty. As such they are to be avoided.

Finally, the rational and animal soul,—the latter on condition that it be joined to the former,—ever love what has beauty of order and harmony of composition. As regards the animal soul, this is an effect of natural instinct; in man, it is due to reflection. It is reflection that causes the rational soul, by comparing the highest Ideas with earthly existences, to realize that all that has an affinity with the Supreme Good is more harmonious and more beautiful and to see that what resembles the Supreme Good in order and proportion is closest to the principle of unity. Reflection, too, causes the rational soul to avoid all that lacks unity and grace and harmony as closely connected with the principle of plurality and discord.

With these principles before him, Avicenna goes on to show that a rational being always loves and desires the sight of a beautiful form. That form is the manifestation of the interior integrity and harmony, the existence of the divinity, in its possessor. This love in man can result only from the partnership of the rational and animal soul and not from either one of them in separation. It cannot arise from the rational soul alone because it is born from sensible and perishable particulars perceived by the senses; it cannot arise from the animal soul alone because animal love involves a man in vice and fetters the activity of his rational soul. Such love must arise from the alliance of the two. A man who loves a beautiful form with a sensual intention can be considered a libertine and dominated by animal desires. But that man who loves such a form with a spiritual intention is considered to grow in worth and dignity. For this type of love brings him nearer to the source of all beauty and to the first object of all love, makes him resemble the most noble and exalted of all beings and results in grace of character, generosity and kindness. Therefore, it is the part of wisdom, the act of a noble and learned character to have his heart occupied in the contemplation of a beautiful human form for that is the source of further ennobling.

It is on these considerations and arguments that Avicenna formulates his conclusions on the pure love of rational creatures. Human love cannot be pure unless the animal faculty is subdued, until it is reduced to the status of a tool in the service of the rational soul. Therefore, the urge towards intercourse engendered by the sight of the beauty of the beloved is altogether to be suppressed. The lover who seeks the beloved even with this ulterior motive in mind leaves the purity of his love open to suspicion. Pure love is rather the intermingling of the lover's heart and soul with those of the beloved. Provided physical and animal desires are absent, those urges which arise from the sight of the beloved, kissing and embracing, are permitted to those who love purely because their purpose is to effect that union. By embracing the beloved, by the use of touch and sight, the lover reaches the object of his love; by kissing her, the lover mingles his heart with that of the beloved.

It is most important to note that the morality of love for Avicenna rests entirely on the free exercise of the rational soul by which man is furthered along towards union with the Absolute Good, and not on religious or legal grounds. That love is pure, is a source of nobility and progress in virtue, which brings man nearer to the source of all virtue. That love is impure and a vice which harms the rational soul and impairs its exercise because of the domination over it of the animal soul and its desires.[32] Corporal pleasure, as a matter of fact, in this life is taught by religious law and revealed by Mohammed.[33] The pleasures, then, that arise from kissing and embracing, from the use of the senses of sight and touch, are quite legitimate in the eyes of the Law and of the Prophet, the more so since they are the instruments that tend to effect a union of heart and soul in which pure love consists. Those actions, therefore, are not blameworthy unless they lead to actions and feelings that belong to the animal soul alone. Thus, the morality of human love is founded on whether it tends to ennoble man, to make him increase in merit and in worth or whether it tends to reduce him to the level of the animal.

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From the year 1037 at least, the date of Avicenna's death, and how much earlier is not known, there was available in Arabian philosophy a doctrine of pure love that coincides in every particular with the *fin' amors* of the troubadours. Like theirs, pure love consists in the union of heart and soul; like theirs, pure love is a source of nobility, progress in virtue and refinement; like theirs, pure love eschews intercourse and grossness; like their, pure love allows kissing and embracing, the use of the senses of sight and touch, as effecting closer union; like theirs, pure love is amoral in the sense that it is divorced from religious and legal grounds; like theirs, the morality of love lies in its furtherance or detraction of man in worth and nobility of character; like theirs, the pursuit of pure love is incumbent on every man who is wise, noble and learned.

It will be objected immediately that there is no documentary evidence to show that the troubadours whom we have studied knew Avicenna's *Treatise on Love*. Those who do so are perfectly right. The first translations of Avicenna's works were not made before the middle of the twelfth century. It was Dominicus Gundissalinus working with John of Seville under the patronage of Raymond I, Archbishop of Toledo (1126-1151), who introduced his works in translation to the Latin world along with the *Liber de Causis*, the works of Al-Kindi, Al-Farabi, Ibn Gabirol, Al-Ghazzali as well as Arabian works on arithmetic, astronomy, astrology and medicine.[34] Therefore, Guillaume IX could not have known them; chronologically, it was barely possible that Marcabru. Cercamon, Jaufré Rudel, Bernart Marti knew them; it is possible that Bernard de Ventadour read them or was acquainted with their contents. Certainly, from the appearance of the translations of his works, Avicenna was widely read, used and copied.[35] However, even among the philosophical works that were translated, there is no mention of his *Treatise on Love* and there is no trace of Latin manuscripts of it. Thus, we are reduced to mere speculation and theory and as it has been put 'plunged into vague hypotheses'. It is worth while remarking, however, that thus far those opinions that deal with the origin or formation of the essential characteristics of Courtly Love have not advanced beyond the state of theory. They never will go beyond that stage until evidence is adduced more weighty than has as yet turned up in the form of documentary evidence that does not depend on the more or less fervid imagination of those who apply it or until hypotheses and theories be supported and built up by cumulative evidence that will remove them from the realm of theory. That is, after all, the sole purpose of this study.

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[32] In the same way those characteristics of the animal soul which are considered as an excess when they are found in the non-rational animal,—however in *animals* such an excess is not considered as a vice, but rather as an excellence of their faculties—, are considered as vices in the case of *man* because of the harm they do to the rational faculty. *Ibid.*, chap. V, p. 220.

[33] Cf. note 18 *supra*.

The conception of the *fin' amors* of the troubadours is a highly specialised one. The idea of pure love that is a love of desire aroused and intensified by every physical solace short of intercourse and which is nevertheless the fount and origin of virtue and good is thoroughly foreign to human nature in general and to the religious, moral and cultural atmosphere of the country in which it first appeared. It is not a phenomenon like the motif of love-sickness, for example, common to human nature in general. The appearance of that motif, say, in Irish, Arabian and Provençal literature does not argue a relationship between them any more than would, for example, the invention of the bow and arrow among the North American Indians and the natives of Africa point to an inter-relationship between them. To support a theory of such inter-relationship, documentary evidence should and must be demanded. But were we to find elsewhere a conception of pure love similar to that of the troubadours, a conception that is not general, that cannot be attributed to human nature, that is in a word specialised, and were that conception of love earlier than the troubadour idea and accessible to them, then one can be fairly sure that there is some sort of relationship between them. That conception has been pointed out in the philosophy and mystical writings of Avicenna. Documentary evidence, though to be sought for and welcomed, need not be demanded any more than it would be to prove the relationship of a people or tribe among whom were found such a specialised weapon as, say, the boomerang, to the aborigines of Australia.

The troubadours could have known such a conception of pure love as taught by Avicenna. There were many bridges over which a knowledge of his philosophy and mysticism might reach them if only indirectly. The Latin and the Muslim were associated with each other in commerce.[36] Pilgrimages to the Holy Land and the Crusades acquainted the West with the superior culture and civilization of the East.[37] There was communication of Southern France with Muslim Spain through various channels,—Mozarabs, Mudejars, Jews, Christian slaves,[38] and through armed incursions on both sides.[39] It was through these varied channels that came the Arabic influence on science in the eleventh and even in the tenth century.[40] Guillaume IX and Marcabru had both been to Spain. They, at least, had the opportunity of knowing Avicenna's teaching there or of becoming acquainted with his ideas on a subject that was of particular interest to them. Certainly the form of their verse, the vehicle of the lyrics that celebrated *fin' amors*, was influenced by Andalusian Arabic poetry.[41] Why not, then, the content of their lyrics,—their conception of pure love?

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[34] For a list of the works translated by them, cf. George Sarton, *Introduction to the History of Science* II (Baltimore, 1931), pp. 169-172.

[35] On the works of Avicenna translated and on the difficulties involved as regards their dates and genuineness, cf. H. Bedoret, 'Les premières versions tolédanes de philosophie', *Revue Néoscolastique de philosophie* XLI (1938), pp. 375-400. A good example of the wide use made of Avicenna is given by R. de Vaux, *Notes et textes sur l'avicennisme latin aux confins des XIIe-XIIIe siècles* (Paris, 1934) especially pp. 18-43.

[36] Cf. W. Heyd, *Histoire du commerce du Levant au moyen âge* (Leipzig, 1923), especially I, pp. 181-188.

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[37] Cf. Louis Bréhier, *L'Eglise et l'orient au moyen âge* (Paris, 1907), pp. 89-100 and Miguel Asin Palacios, *La Escatologia musulmana en la Divina Comedia*, (Madrid, 1919), pp. 299-308, especially p. 301.

[38] Cf. Miguel Asin Palacios, *op. cit.*, pp. 304-305.

[39] In reading Ibn-ul-Atir . . . one can easily follow the changing fortunes of the *karr* and *farr* tactics between the Muslim and Non-Muslim populations on the Iberian peninsula and across the Pyreness, via the two *puertos* leading towards Bayonne and Bordeaux as far as the Limousin and Poitou on the one side, and via Roussillon and Perpignan to Narbonne and Montpellier on the other. A. R. Nykl, *The Dove's Neck-Ring* (Paris, 1931), p. xxxiv. Cf. also pp. xxxv-xxxvi.

[40] Cf. Lynn Thorndike, *A History of Magic and Experimental Science* I (New York, 1929), pp. 697-698.

[41] Cf. A. R. Nykl, *op. cit.*, pp. lxxix-cii.

A Treatise on Love[1]

By IBN SINA[2]

Translated by Emil L. Fackenheim

INTRODUCTION

I.

IBN SINA'S *Risalah fi'l- 'ishq*, a translation of which is offered here, was edited critically by M. A. F. Mehren in 1894[1] and again in Cairo in 1917,[2] the latter edition being mostly, though not invariably, in agreement with the former. Our translation is based on Mehren's edition as the critical one of the two, but attention is drawn to any important deviation of the Cairo edition. Manuscripts in addition to those used by these two editions are listed by Brockelmann[3] and Ritter.[4]

Along with his edition of the text Mehren published a resumé in French. Nevertheless, a new and complete translation can be offered without apology for the following reasons: (i) not being a complete and literal translation, Mehren's resumé cannot adequately serve the student who does not read Arabic; (ii) in addition to being not literal and incomplete, Mehren's resumé is at times inaccurate or incorrect; (iii) Mehren's work is not readily accessible; but the *Risalah fi'l- 'ishq* is of sufficient historical and systematic importance to merit wide accessibility in a complete English translation.

II.

To show the historical importance of the *Risalah fi'l- 'ishq* would be a task transcending the scope of the present article. Ritter has already given some impression of its position in the development of the general Arabic doctrines of sacred and profane love.[5] Our task here is to supplement this by indicating its position in the development of the *philosophical* Arabic doctrines of love, thus correcting the erroneous impression in Ritter's article that Ibn Sina's *Risalah fi'l 'ishq* had no predecessors in the field of Arabic philosophy.

As a matter of fact, it is known that al-Kindi wrote a special treatise on love although that treatise itself is not extant.[6] Furthermore, the thirty-sixth treatise of the *Encyclopedia* of the Brethren of Purity is entirely devoted to the subject of love.[7] In addition thereto, there are scattered references to this subject in the so-called *Theology of Aristotle* and in the writings of al-Farabi.

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[1] *'ishq*, cf. A. M. Goichon, *Lexique de la langue philosophique d'Ibn Sina* (Paris, 1938) (henceforth quoted as *Lexique*), pp. 223 ff.—*St. P.* reads instead: ". . . to establish the existence of love in all beings . . ." For technical reasons, the system of transcription adopted cannot avoid some ambiguities: *t* is used for both emphatic and non-emphatic *Ta*; *z* for both emphatic and non-emphatic *Za*; *h* for both emphatic and non-emphatic *Ha*; *s* for *Sin* and *Sad*; *d* for *Dal* and *Dad*. *St. P.* will indicate the St. Petersburg manuscript used by Mehren, *B. M.* the manuscript of the British Museum. We shall indicate only those variant readings in the notes which alter the meaning of the text. All italics not indicating quotations or foreign words are ours, used for the purpose of clarifying the meaning of the text.

[2] Lit. the great professor, cognomen of Ibn Sina.

[1] *Traités mystiques d'Abou Ali al-Hosain b. Abdallah b. Sînâ ou d'Avicenne* III ième fasc., (Leyden, 1894), pp. 1-27.

[2] *Jami' al-bada'i' yahtawi 'ala 19 risala libn Sina . . .*, Cairo, 1917.

[3] C. Brockelmann, *Geschichte der Arabischen Literatur* I (Weimar, 1898), p. 456, and *Supplementband* I (Leyden, 1937), p. 819.

[4] In *Der Islam* XXI (1933), p. 92.

[5] H. Ritter, 'Arabische und Persische Schriften ueber die profane und die mystische Liebe,' *Der Islam*, XXI, pp. 84 ff.

[6] Cf. Muhammad Ibn Ishaq, *Kitab al-Fihrist*, ed. G. Fluegel (Leipzig, 1871), p. 259, also G. Fluegel, *al-Kindi* (Leipzig, 1857), pp. 31, 47.

The doctrine of love found in the *Theology of Aristotle* is determined by its Neoplatonic evaluation of reality, i.e., by a radical differentiation in value between the "high", "spiritual" and the "low", "natural" world. Thus the beauty of an "image" is, in Platonic fashion, characterized as inferior compared with that of the idea.[8] Even external bodily beauty is due to form not to matter,[9] a type of beauty which thus may be found also in non-material things.[10] Furthermore, in human beings the beauty of character and disposition is much to be preferred to external beauty, and internal beauty goes often hand in hand with external ugliness.[11] The most significant fact to remember is that bodily beauty is merely derived from the beauty of soul, a fact which proves the superiority of the latter.[12] Since the degree of the beauty of a being depends on the position it has in the cosmic hierarchy, God is the highest beauty[13] and, the desire of the multitude for external beauty notwithstanding,[14] man's true destiny is to seek the highest beauty.

Insofar as it is attraction to external beauty,[15] such as that of women,[16] love is a disposition of "nature" aroused by a certain "sorcery" or "seduction" (*sihr*) which, although not to be condemned since it is "natural", is yet to be looked on with disapproval since it leads man to "nature" and away from true spirituality. A truly speculative man who has freed himself from practical affairs will be immune to this seduction and free from the dependence on the external object of love it involves, free in his self-sufficiency with his inner resources.[17] However, insofar as love is "true", i.e., "intellectual" love, it is a force binding together everything spiritual and truly living; it is an eternal force in the "high world" where all discord and contrast are overcome. More than that, "the high world is identical with love".[18]

Summarizing references to the subject of love found scattered through al-Farabi's writings we can form this very incomplete picture: "With the First lies the form of love and It is loved *per se*, lovable *per se* even if no being loved It."[19] It is the first object of love,[20] but also the first subject of love.[21] Its love must have Itself as object.[22]

Love for the First leads the second intelligences to perfection.[23] To be sure, each of these has a specific object of love, but at the same time they all have the First as the common object of their love.[24]

Love for the First leads human beings, too, to the limits of perfection of which they are capable, i.e., it makes them reach a certain amount of community with the immaterial intelligences.[25] As for the love of human beings in general, this is to be characterized as a state of their substance rather than a constitutive part of it. Nevertheless it is part of that emanation which ultimately stems from the One. For it is a quality whereby human beings are connected and harmonized with each other, and it is of the nature of the One to bestow on the beings along with their substances such states as are conducive to order, harmony and organization.[26]

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[7] *Die Abhandlungen der Ichwan as-Safa*, ed. F. Dieterici (Leipzig, 1886) (henceforth quoted as *Br. P. text*), pp. 493-507, and F. Dieterici, *Die Lehre von der Weltseele* (Leipzig, 1872) (henceforth quoted as *Br. P. Weltseele*), pp. 70-84.

[8] *Die sogenannte 'Theologie des Aristoteles'*, ed. F. Dieterici (Leipzig, 1882), p. 46.

[9] *Op. cit.* pp. 47 ff.

[10] *Op. cit.* p. 48.

[11] *Op. cit.* p. 50, cf. the contrast with Ibn Sina's teaching, below p. 221.

[12] *Op. cit.* p. 51.

[13] *Op. cit.* p. 143.

[14] *Op. cit.* p. 50.

[15] *Op. cit.* pp. 66 ff., 72 ff.

[16] *Op. cit.* p. 72.

[17] *Op. cit.* pp. 72 ff.

[18] *Op. cit.* pp. 93 ff.

[19] *Philosophische Abhandlungen*, ed. F. Dieterici (Leyden, 1890), p. 71.

[20] *Op. cit.* p. 83.

[21] *Op. cit.* p. 58.

[22] *Ibid.*; *Die Staatsleitung*, translated by Dieterici-Broennle (Leyden, 1904), p. 22.

[23] *Der Musterstaat*, ed. F. Dieterici (Leyden, 1895), p. 23.

[24] *Philosophische Abhandlungen*, p. 62.

[25] *Der Musterstaat*, p. 24.

The treatise *On the Essence of Love* found in the *Encyclopedia* of the Brethren of Purity is probably the most explicit and important treatment of love to be found in Arabic philosophy prior to Ibn Sina, a treatise which would well merit a new translation and a detailed analysis. The basis of the doctrine of this treatise, which deals exclusively with love as a quality of the human soul, is the Platonic division of the soul into (i) nutritive-appetitive, (ii) emotional-animal and (iii) rational parts.[27] Each of these three parts has a specific type and specific objects of love, namely, (i) food and sexual gratification, (ii) victory, revenge and supremacy, and (iii) knowledge and the acquisition of perfection, respectively. In all its manifestations love is definitely a quality of the soul, never of the body; for love is most properly defined as the desire for unification with the object of love,[28] and unification is an entirely spiritual achievement, bodies allowing merely of mixture and proximity.[29] Even in the manifestations of the lowest type of love the body serves merely as an instrument in an activity which is of the soul.[30]

Thus all love has its place and type of unification. Embracing, kissing[31] and sexual intercourse,[32] for instance, are types of unification in accordance with the capacity of the animal soul, the desire for the preservation of the species being part of the nature of most animals.[33] And all love—which is never ceasing in the souls—[34] is a perfection given by God's grace for the purpose of leading the souls toward good aims.[35]

However, all love is of a perishing nature except spiritual love and especially the love of God;[36] and God is the "first object of love".[37] The real and final aim of all love is to "awaken the soul from slumber and folly" and to lead it away from the sensual-bodily to the spiritual world, away from mere bodily ornament and beauty to the beauty of the spiritual world.[38] Therefore, those who are truly wise try in their actions, insights and character to become assimilated to the universal soul just as the universal soul attempts to become assimilated to the Creator Himself.[39]

III.

An indication of the connection between the *Risalah fi'l- ʿishq* and Ibn Sina's general philosophical doctrine is to be found in the annotations to the translation given below; a more thorough exhibition of this connection would lead beyond the scope of this introduction. It remains here merely to point out one fact: that Ibn Sina's psychology is the basis on which his doctrine of love is built.[40] To exhibit this by some examples: the third chapter of the *Risalah*

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[26] *Op. cit.* p. 17.

[27] *Br. P. text*, p. 495, *Br. P. Weltseele*, p. 73.

[28] *Br. P. text*, pp. 494 ff., *Br. P. Weltseele*, p. 72.

[29] *Br. P. text*, p. 496, *Br. P. Weltseele*, pp. 73 ff.

[30] *Br. P. text*, p. 497, *Br. P. Weltseele*, p. 75.

[31] *Br. P. text*, p. 496, *Br. P. Weltseele*, p. 74.

[32] *Br. P. text*, p. 500, *Br. P. Weltseele*, p. 78.

[33] *Ibid.*

[34] *Br. P. text*, p. 493, *Br. P. Weltseele*, p. 70.

[35] *Br. P. text*, p. 501, *Br. P. Weltseele*, p. 79.

[36] *Br. P. text*, p. 503, *Br. P. Weltseele*, p. 80.

[37] *Br. P. text*, pp. 506, 507, *Br. P. Weltseele*, pp. 83, 84.

[38] *Br. P. text*, pp. 504 ff., *Br. P. Weltseele*, pp. 81 ff.

[39] *Br. P. text*, p. 506, *Br. P. Weltseele*, p. 83.

[40] Cf. most conveniently Ibn Sina's short treatise on psychology published by S. Landauer, *Die Psychologie des Ibn Sina*, *ZDMG* XXIX (Leipzig, 1875), pp. 335-418;

fi'l- 'ishq, with its basic division of the nutritive soul into three parts, is virtually a summary of doctrines expounded more fully elsewhere[41] with the addition of such conclusions as appertain to the subject of love; the division of the animal soul into perceptive and appetitive parts and the division of sense-perception into external and internal, which are basic to the conclusions arrived at in the fourth chapter, are likewise summary of doctrines fully expounded elsewhere.[42]

But Ibn Sina's psychology is in a yet deeper sense the basis of his doctrine of love. In Ibn Sina's psychology as a whole, Platonic have given way to Aristotelian conceptions. The concept of a harmonious hierarchical order of the parts of the soul has taken the place of a concept leading readily to a doctrine advocating the suppression of the lower parts of the soul in the attempt to reach the perfection of the highest. It is on this basis that some of Ibn Sina's most important doctrines on love are formulated, especially those of the fifth chapter where a great attempt is made to allot to the love of external beauty a role which will remain positive, valuable and honorable even when compared with the most exalted and unearthly love.

TRANSLATION

In the name of the all-merciful God: O Abdullah 'l-Ma'sumi,[3] the lawyer, you have asked me to compose for you a clear and brief treatise on love. In reply let me say that with the following treatise I have done my utmost to win your approval and to satisfy your desire. I have let it consist of the following seven chapters:

(i) On the power of love as pervading all beings;
(ii) On the existence of love in those substances[4] which are simple and inanimate;[5]
(iii) On the existence of love in those beings which have the faculty of assimilating food, insofar as they possess that faculty;[6]
(iv) On the existence of love in the animal substances, in respect of their possession of the animal faculty;
(v) On the love of those who are noble-minded and young[7] for external beauty;
(vi) On the love of the divine souls;
(vii) General conclusion.

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more explicitly his *Opus egregium De Anima* which is part of the *ash-Shifa'*. Of this work we have used a typewritten copy of the Latin edition of Venice 1508, the Arabic original being unavailable.

[41] Cf. Laudauer, *op. cit.*, pp. 349 ff., 384 ff.; *Opus egregium De Anima*, 4*v* col. 2B.

[42] Cf. Landauer, *op. cit.*, pp. 353 ff., 391 ff.; *Opus egregium De Anima*, 4*v* col. 2B ff.; cf. H. A. Wolfson, 'The Internal Senses in Latin, Arabic and Hebrew Philosophic Texts', *Harvard Theological Review* (Cambridge, 1935), pp. 95 ff.

[3] Cf. on him C. Brockelmann, *Geschichte der arabischen Literatur, Erster Supplementband* (Leiden, 1937), p. 828; cf. also Mehren's resumé, p. 1 note 2.

[4] *Jawhar*; this term is here used in a sense which includes accidents. For this usage which is quite general in Arabic philosophy cf. also al-Farabi, *Der Musterstaat*, ed. F. Dieterici (Leyden, 1895), p. 44 and Ibn Rushd, *Compendio de Metafisica*, ed. C. Q. Rodriguez (Madrid, 1919), part I, chapter 24.

[5] Cf. A. M. Goichon, *Introduction à Avicenne* (Paris, 1933), p. 82. By adding the character "inanimate" to that of simplicity Ibn Sina excludes souls, intelligences and God so that only prime matter, form and accident remain.

[6] *B.M.* reads instead: "On the existence of love in the vegetative beings."

[7] I.e. in the prime of life (cf. Lane, *Arabic-English Lexicon*, (London, 1863 ff.) book I, part 6), p. 2337, article *fatâ*; this root has the secondary meaning of "generous".

(p. 2)

I.

On the Power of Love As Pervading All Beings.

Every being which is determined by a design[8] strives by nature toward its perfection, i.e., that goodness of reality which ultimately flows from the reality of the Pure Good,[9] and by nature it shies away from its specific defect which is the evil in it, i.e., materiality and non-being,— for every evil results from attachment to matter and non-being. Therefore, it is obvious that all beings determined by a design possess a natural desire and an inborn love, and it follows of necessity that in such beings love is the cause of their existence. For everything that can be signified as existing belongs into one of these three categories: (i) either it has arrived at the specific perfection, (ii) or it has reached the maximum of defect, (iii) or it vacillates between these two states with the result that[10] it is essentially in an intermediate position between two things. Now that which has arrived at the extreme of defect has been carried to absolute non-being, and to that which has no attachments left the term "absolute non-being" is suitably[11] applied. Thus, while that which is disposed with complete non-being may deserve to be counted among the "beings" in a classification or in thought, its "being" must not be considered as *real*[12] being. And existence, in an unqualified sense, cannot appropriately be applied to it except by way of metaphor. And in a classification it must not be made to belong to the group of beings except *per accidens*. Beings in the real sense, then, are either such as are prepared for the maximum of perfection or such as are in a position intermediate between a defect occurring by reason of some cause and a perfection existing in the
(p. 3) nature itself. Therefore, no being / is ever free from *some* connection[13] with a perfection, and this connection with it is accompanied by an innate love and desire for that which may unite it with its perfection.

This becomes clear also from another aspect, that of causality and the "why":[14] since (i) no being which is determined by a design is devoid of a perfection specific to it; since (ii) such a being is not in itself sufficient cause for the existence of its perfection, because the perfections of the beings determined by a design emanate from the *per se* Perfect; and since (iii) one must not imagine that this Principle from which perfection emanates intends to cause a loss to any one of the particular beings—as the philosophers have expounded[15]—; since all this is so, it is a necessary outcome of His[16] wisdom and the excellence of His governance to plant into everything the general principle of love. The effect is that He thus indirectly preserves the perfections which He gave by emanation, and that He thus expresses His desire to bring them into being[17] when they are absent, the purpose being that the administration [of the universe] should run according to a wise order. The never-ceasing existence of this love in all beings determined by a design is, therefore, a necessity. If this were not so,[18] another love would be necessary to preserve this general love in its existence, to guard against its non-being and to retrieve it when it has lapsed, anxious lest it might disappear. But one of these two loves would be superfluous, and the existence of something superfluous in nature—which is divinely established—is impossible.[19] Therefore, there is no principle of love other than this absolute and general love. And we can conclude that the existence of every being determined by a design is invariably accompanied by inborn love.

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[8] This rendering of the term *mudabbar* must be preferred to Mehren's *organique* (resumé p. 1), (i) because it denotes both internal entelechy and the dependence on a superior cosmic principle; (ii) because it is free from such connotations as would make it inapplicable to entities which are "inorganic" but nevertheless according to the doctrine at hand determined by a design. Cf. also, note 25.

[9] *Al-khayr al-mahd*, technical term for God. Cf. Ibn Sina, *ash-Shifa'* (Teheran, 1886) vol. ii, p. 585 (quoted *Lexique* p. 114): "That that which exists necessarily *per se* is the Pure Good". Cf. also Ibn Sina, *an-Najjâh* (1938) p. 229, N. Carame, *Avicennae Metaphysices Compendium* (Rome 1926), p. 75. This term which is of Neoplatonic origin is used with great frequency by Ibn Sina's predecessors, cf. e.g. the so-called *Liber de Causis*, ed. O. Bardenhewer (Freiburg, 1882), pp. 58 ff. which uses it as its very title. Cf. also the pseudo-Aristotelian *Theology of Aristotle* ed. F. Dieterici (Leipzig, 1882), e.g. pp. 12, 23; al-Farabi, *Philosophische .Abhandlungen*, ed. F. Dieterici (Leiden, 1890), p. 58.

[10] If we accept the emendation suggested by Mehren (text p. 2, note d) the text reads: ". . . then its root is essentially . . ."

[11] We should perhaps read *bilharâ* instead of Mehren's *bilharriyyi* (text p. 2), cf. Lane, *op. cit.*, vol. ii p. 558.

[12] Lit. essential (*dhatî*), cf. *Lexique* pp. 137 ff.

[13] Ibn Sina uses the root *lâbasa* to denote association in the most general and indefinite sense, cf. note 35.

[14] Read *limayyah* instead of Mehren's *lim'iyyah* (p. 3), cf. *Lexique* p. 374.

Let us now in this undertaking set out from a platform higher /
(p. 4) than our previous one by proceeding to an examination of the Highest Being and the way things behave under the governance of the Governor, to the full extent of its magnitude. Here we make the statement: The good is loved in its very essence. If this were not so, why should every being set up before itself as work and aim something it desires, aims at and works for, in imagining its goodness? If goodness were not in its very essence loved, why should every type of endeavour invariably be directed toward the good, in all its free actions? Therefore the good loves the good, for love is in truth nothing but whole-hearted approval of the pleasing and suitable. And this love is the source of its yearning for it when it is absent[20]—if it is the sort of thing which may be absent[21]—, and of its unification with it when it is present. Therefore every being approves of what is suitable for it and yearns for it when it is not there. And the specific good[22] is the natural propensity of a being and the recognition of the truly suitable as such.[23] Now approval and desire, and disapproval and aversion result in a thing from the attachment to its goodness.[24] And a thing is in itself approved of only by reason of its goodness, for if approval is due to a thing in itself, then this is on account of its rightness and goodness. It is clear, then, that the good is loved *qua* good, whether it is the specific goodness of a thing or a goodness it has in

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[15] Passages containing this doctrine which Aristotelianism and Neoplatonism have in common could be adduced in large numbers from all Arabic philosophers. Cf. as a mere example al-Farabi, *Der Musterstaat* pp. 15 ff.

[16] While there is no differentiation in Arabic between the personal and the impersonal pronoun, the context does not allow complete consistency in the translation. Ibn Sina's doctrine obliges the translator to use the impersonal pronoun wherever reference is made to God except where the context has personalistic connotations deriving from Ibn Sina's religious rather than from his philosophical convictions. Cf. notes 87, 88, 104.

[17] *St. P.* reads instead: unification.

[18] I.e. if this love did not exist without ever ceasing.

[19] Cf. for the use of this Aristotelian argument (cf. e.g. Aristotle *G.A.* 744 a 36, b 16; *De Caelo* 291 a 24, b 16; *P.A.* 686 a 22) also S. Landauer, *Die Psychologie des Ibn Sina* (ZDMG vol. XXIX), p. 351.

[20] *B.M.* remote.

[21] *B.M.* may become manifest.

[22] Mehren wants to read "love" instead of "good" (resumé p. 2 note 2). However, the Cairo edition (p. 71 ll. 9-10) reads the whole passage differently: "the specific good is what is in reality suitable for the thing and, apart from the real state of affairs, the opinion wherein it is held to be suitable."

[23] *B.M.* omits the last words from "of the . . ."

[24] In *B.M.* the following sentence is, according the Mehren (text p. 4 note e), completely confounded.

common with others. Every type of love has as object either something already attained or something which is still to be attained. Whenever the goodness of a thing increases, the merit of the object of its love (p. 5) increases also, / and so does the love for the good.

If this is established, then let us proceed to say this: that Being which is too exalted to be subject to the governance[25] must be the highest object of love, because It must be the maximum in goodness. And the highest *subject* of love is identical with the highest *object* of love, namely, Its high and sublime Essence. Because the good loves the good through that attainment and penetration whereby it is connected with it, and because the First Good penetrates Itself in eternal actuality, therefore Its love for Itself is the most perfect and complete. And because there is no distinction among the divine qualities of Its Essence, love is here the essence and the being purely and simply, i.e. in the case of the Pure[26] Good.

In all beings, therefore, love is either the cause of their being, or being and love are identical in them. It is thus evident that no being is devoid of love, and this it was our intention to show.

II.

On the Existence of Love in the Simple Inanimate[27] Entities.

Simple inanimate entities are divided into three groups: (i) matter in the real sense of the term,[28] (ii) that type of form which cannot subsist in separation,[29] and (iii) accidents. The difference between accidents and this type of form lies in the fact that this type of form is constitutive of the substances.[30] Therefore earlier metaphysicians have considered it proper to classify this type of form among the substances, because it is part of the self-subsisting substances,[31] and they did not deny to it the name of substantiality merely because it cannot exist separately by itself,—for such is the state of the material substance.[32] In spite of this, then, it is to be counted among the substances, and this is because it (p. 6) is / in its very essence part of such substances as exist *per se*. Furthermore, the metaphysicians assess a special value to it, i.e., to form over matter with respect to the attainment of substantiality.[33] The reason for this is that the substance subsists as an *actual* substance on account of the substantiality of this type of form, and that whenever the latter exists it necessitates the *actual* existence of the substance.

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[25] *Tadbîr*, cf. supra, note 8. For this use of the term cf. Ibn Rushd, *Tahâfut at-Tahâfut*, ed. M. Bouyges (Beyrouth, 1932), p. 155 where it denotes that organic quality whereby the animal is alive.

[26] This word is added by *B.M.*

[27] Cf. supra, note 5.

[28] Lit. true (*haqîqî*) matter.

[29] Cf. for all senses in which Ibn Sina uses the term "form" *Lexique* pp. 185 ff. More relevant here is his classification of substances wherein he makes the basic distinction between such forms as do and such as do not exist separately. This is clearly formulated in *an-Najjâh* pp. 200 ff., Carame, *op. cit.* pp. 6 ff.

[30] Cf. e.g. Goichon, *Introduction à Avicenne*, p. 109, and Ibn Sina, *Le Livre des Théorèmes et des Avertissements*, ed. J. Forget (Leyden, 1892) pp. 116. Cf. also al-Farabi, *Die Staatsleitung*, ed. P. Broennle (Leyden, 1904), p. 12.

[31] It is a "constituent" (cf. note 34) part.

[32] I.e. that to be a "self-subsisting" substance it needs both form and matter both of which are not in themselves self-sufficient.

[33] Cf. e.g. al-Farabi, *as-Siyâsah al-Madaniyah* (Hyderabad, 1346 A.H.), pp. 2, 9; *Die Staatsleitung*, pp. 1 ff., 11. For Ibn Sina cf. further e.g. his *ar-Risâlah al- 'arshiyah . . .* (Hyderabad, 1353 A.H.), p. 4. Cf. however for the radically different doctrine of the Brethren of Purity E. L. Fackenheim, 'The Conception of Substance in the Philosophy of the Ikhwan as-Safa' *Mediaeval Studies* V (1943), pp. 117 ff.

For this reason it has been said that form is a substance in the mode of actuality.

As for matter, this is counted among those which receive substantiality potentially. For actual existence does not necessarily result from the existence of the matter of a substance. Therefore it has been said that it is a substance in the mode of potentiality.

The true nature of form has thus definitely been established, and, also, that it has nothing at all in common with the accident, because the latter is not a constituent[34] of the substance and cannot be considered as a substance from any point of view.

If that is clear, then we proceed to say this: every one of these simple inanimate entities is accompanied by an inborn love, from which it is never free, and this love is the cause of their being. As for matter, this is not there for the time when it merely desires to have a form, and when it exists it does so on account of its yearning for form. For that reason you will find that whenever it is deprived of a form it will hurry to receive another form in its stead, being always on guard against absolute non-being. For it is an inexorable law that all beings by nature shy away from absolute non-being. But matter is the abode of non-being. Thus, whenever a form does not substantially subsist in it, this will be equivalent to relative non-being, and if matter is not connected with a form at all, there will be absolute non-being.[35] There is no need here for a water-tank to disclose that this is water.[36] Matter is like a low-born and blameworthy woman who tries to prevent her
(p. 7) ugliness from becoming known / and whenever her veil is uncovered she conceals her defects with her sleeve. It is established, then, that matter possesses an inborn love.

As for the type of form which is our concern here, the existence of inborn love in it is obvious in two respects: (i) one type of evidence lies in its clinging to its subject and its rejection of those things which would remove it from that subject; (ii) the second type of evidence lies in its adherence to its perfections and natural places when it happens to be at them, and its yearning movement toward them when it is separated from them, as is the case with the forms of the five simple bodies[37] and the things composed of the four elements. These are the only types of thing to which form ever adheres.

As for accidents, the existence of love in them is quite obvious in their adherence to the subject, and the way this works is that[38] the subject is connected with opposites by turns.

We conclude, then, that not one of these simple entities is devoid of love which is inborn in their nature.

III.

On the Existence of Love in the Vegetative Forms, i.e., the Vegetative Souls.

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[34] *Muqawwim*, cf. *Lexique* p. 328.

[35] "Subsist" (*qâma*) indicates the specific relation between form and matter whereby an actual substance is constituted, whereas "to be connected" (*lâbasa*) indicates relation in the most indefinite and general sense. Cf. *supra*, note 13.

[36] The Cairo text reads instead (p. 73 l. 11): "there is no need to wade through it (*khawd* instead of *hawd*) to disclose that this is water".

[37] The marginal note explains: "the heavenly and the elemental bodies."

[38] *St. P.* reads instead: ". . . and this explains the fact that . . ."

Putting this matter briefly let us say: the vegetative souls are subject to a division into three parts, namely, (i) the nutritive faculty, (ii) the faculty of growth and (iii) the faculty of procreation. Correspondingly, there is a specific love in the vegetative faculty according to these three parts: (i) The first of these is specific to the nutritive faculty, and this is the source of its desire for the presence of food in accordance with the need of matter for it, and for its maintenance in the body which receives it after its assimilation to the nature of the latter. (ii) The second type of love is specific to the faculty of growth, and this is the source of its desire for the[39] increase fitting the proportions of the body which is nourished. (iii) The third type of love is specific to the faculty (p. 8) of procreation / and this is the source of its desire to produce a new principle similar to the one from which it derives itself.[40]

It is clear, then, that whenever these faculties exist, these types of love are attached to them. They, too, are therefore by nature endowed with love.

IV.

On Love in the Animal Souls.

There is no doubt that all animal faculties and souls[41] are characterized by a type of behaviour which is impelled by an inborn love. If this were not so,—if they did not possess a natural aversion whose source is an inborn detestation, and a natural desire whose source is an inborn love—, then their existence in the animal body would have to be considered as superfluous and without function.[42] And this is obvious in all parts into which these faculties may be divided.

As for that part of sense-perception which is external, this functions by way of seeking familiarity with some sense-objects in preference to others, and by finding some more repulsive than others. Otherwise, the animals would not be able to discriminate between perceptible events and to guard against the occupation with things that cause harm, and the faculty of sense-perception would really be superfluous.

As for that part of sense-perception which is internal, this functions by way of finding rest in the enjoyment of restful imaginations and suchlike when they are present, and by striving for them with desire when they are absent.

As for that part which contains anger, this results from the animal's desire for revenge and mastery and from its shying away from weakness and humiliation and what resembles them.

Turning now to that part of the animal soul which is appetitive, we shall let this be preceded by an introduction which will be helpful in the treatment of this part itself, and also for that portion of our discourse which is constructed on our conclusions here.

(p. 9) Love branches off into two parts: / (i) the first part is *natural* love. Its possessor will not come to rest at any state other than its aim, as far as its essence is concerned and as long as no external force[43] interferes with it. A stone, for instance, cannot possibly fall short of reaching its aim—to arrive at its natural place and find rest in it, which is its essential intention— except by reason of a forcing obstacle. Into this category of love falls the nutritive faculty and the other vegetative faculties: the former at no time ceases to attract food and to feed it to the body, except when an alien impediment prevents it from doing so. (ii) The second type of love is *spontaneous and voluntary*. Its possessor will sometimes turn away under its own initiative from the object of its love. For when it foresees some harm about to befall it, it will weigh the extent of this harm against that of the benefit of which the object of love would be. Thus, for instance, when a donkey sees from afar a wolf approaching, he will stop crunching barley and run away in flight. For he knows that the impending harm that would befall him far outweighs the benefit of pasture.

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[39] *St. P.* adds here: "natural".

[40] *St. P.* reads instead: ". . . similar to the one in which it is . . ."

[41] *St. P.* reads instead: ". . . faculties of the animal souls . . ."

[42] Cf. *supra*, note 19.

[43] *St. P.* reads instead: "curtailing factor".

Sometimes two subjects of love have one and the same object, and one of the two is natural and instinctive, the other spontaneous and voluntary. For instance, both the procreating vegetative and the appetitive animal faculties are related to the aim of procreation.

If this is established, then let us proceed to the following statement: the existence of this disposition[44] in the appetitive faculty of the animal is most obvious of all to the mass of the people, and there is no need to exhibit this as a fact. Generally speaking, the object of the love of the non-rational animal is identical with that of the vegetative faculty, except that from the vegetative faculty only such actions derive as belong to the natural, lower and inferior kind, whereas from the animal
(p. 10) faculty actions result / which are accompanied by free will, belong to a higher and more excellent kind and stem from a finer and more beautiful source, so much so that at times some animals employ therein the faculty of sense-perception. People usually imagine that the type of love here alluded to is specific to the latter, but in truth it is specific to the appetitive faculty, even though the sense-faculty has a sort of mediating partnership. Quite often the appetitive animal faculty resembles the vegetative one by reason of the absence of free will in it, while, on the other hand, the vegetative faculty sometimes resembles the appetitive one, because it reaches its aim through free will.[45]
Thus, it is true that there is a differentiation in the way activity springs forth from these faculties according to the presence or absence of free will, as we see for instance in the case of the propagation of the species. But, nevertheless, in another sense even the non-rational animal set in motion by natural and inborn love has also some free-willed motion, and this is by reason of divine providence. The immediate aim is here not intended *per se*, for this type of love has two kinds of aim. In saying that, this is what we mean: Divine providence necessarily establishes the preservation of sowing and reaping;[46] but this cannot be achieved through the extension of the duration of the individuals which come into being, owing to the necessary occurrence of destruction wherever there is generation; therefore, His wisdom establishes of

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[44] *St. P.* adds: "of love".

[45] The last phrase from "while" on is missing in *St. P.*

[46] We propose here an emendation of the *Sad* in *nasl* to *Sin*, for the following reasons: (i) the Cairo edition reads *nasl* with a *Sin* (p. 76); (ii) *al-harth wan-nasl* (with a *Sin*) is an idiom used elsewhere by Ibn Sina (cf. text p. 25 ll. 12-13, below p. 227); (iii) the phrase as it stands (*nasl* with a *Sad*) can only with great difficulty be given a satisfactory sense: *harth* may mean "female", but to give to *nasl* (with *Sad*) the meaning "male" we must create an uncommon metaphorical interpretation of its literal meaning. Cf. also, note 101. Cf. for the use of *nasl* (with *Sin*) in the same sense by other writers *Br. P. text* p. 500.

necessity a kind of providence which maintains these two in speciës and genera, and which imprints in every individual, by way of *representing* the respective species, the desire to pursue the propagation of its like, and to that end it prepares suitable tools.

Because the non-rational animal is lower than the level at which the faculty of reason is obtained,—the faculty through which a being may abide in the truth of the universals—, it cannot have the benefit / (p. 11) to be derived from the penetration of a specific aim from among the universals. For this reason its appetitive faculty resembles the vegetative faculty inasmuch as it obtains the same end.

What we have established in this chapter, as well as in the one preceding it, will be of assistance in the establishment of much of what is to follow in this treatise, with the help of God and the goodness of His ordinance.

V.

On the Love of Those Who Are Noble-Minded and Young[47] *for External Beauty.*

We must preface the treatment of the subject-matter of this chapter with a fourfold introduction:

(i) Whenever any of the faculties of the soul is conjoined with another higher in rank, then it enters a close connection with the latter, and the result of this alliance with such excellence will be an increase in nobility and ornament for the lower faculty, so much so that the functions issuing from it surpass what they would be were the faculty in a state of separation in number, or in the quality of persistence, nobility and the method of reaching their aim. For the higher faculty supports and strengthens the lower one, and, in averting harm from it, causes it to receive an increase in excellence and perfection; and it assists it in various ways which are of benefit for beauty and high rank. Thus for instance the appetitive faculty of the animal assists the vegetative one; and the faculty of anger wards off things liable to harm its matter,—at least as long as its natural time of withering away has not come—, and it generally averts harmful things. As a further example, the rational faculty of the soul assists the animal (p. 12) faculty in its aims, / improving the quality and rank of the latter by enlisting its help for its own aims. It is for this reason that one does not often find the faculties of sense and desire in man transgress their proper measure in the way they function. This sometimes leads to the point at which the aims become altogether transformed during their functioning and do no longer subsist in *their*[48] accomplishment, but purely in that of the faculty of reason.

In the same way, the faculty of reason sometimes transforms the faculty of imagination in some of its aims by way of enlisting its support, and the latter derives an increase in strength and energy from the fact that the faculty of reason leans on it. This sometimes leads to a point where the faculty of imagination aspires to the attainment of such an aim in independence from reason. It then rebels against reason, adorns itself[49] with its nature and character, makes the claims properly made by reason and fancies complete and independent attainment in the contemplation of the intelligible beings with which, in truth, the soul [i.e., the rational soul] alone is familiar and wherein the understanding finds rest. In all this it acts like a bad servant whom his master has commanded to assist him by joining him in an important enterprise and who thinks, after its successful completion, that he himself has achieved the desired end, that he has achieved it without his master, that his master would have been unable to do it and that he himself is the true master,—whereas in truth he has merely carried out the desired end whose attainment the master has planned; but of this he knows nothing. Similar is the situation in the case of the human faculty of desire. True, this faculty is one of the causes of corruption, but it is necessary in the general desired order which is good, and it is not part of the divine wisdom to abandon a great good because of the adverse character of an evil which is small in relation to it.

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[47] Cf. *supra*, note 7.

[48] I.e. of the faculties of sense and desire.

[49] Lit. finds pleasing.

(ii) Many human activities, impressions and reactions[50] belong to the animal soul alone and by itself, such as sense-perception, imagination, sexual intercourse and the spirit of aggression and warfare. However, because the animal soul of man acquires some excellence on account of the proximity of the rational soul, it executes such functions in a nobler (p. 13) and more refined manner, and it pursues / among the objects of sense those which are of a better constitution and have a sounder composition and relationship,—things of which the other animals are not mindful, let alone that they pursue them.

Along the same lines man applies his faculty of imagination toward noble and more than ordinary matters, so much so that the activity of his imagination often almost resembles that of the pure intellect. As for the various types of action due to anger, he prefers here to act in conformity with the opinion of the people of taste, perfection, justice and intelligence.

Often human actions are quite evidently based on an essential partnership between the rational and the animal faculties, as, for instance, when the rational faculty of a man makes use of his faculty of sense in order to derive universals from the particulars by way of induction.[51] The same thing is the case when in his reflection[52] he resorts to the faculty of imagination. This sometimes leads to a point where he fully reaches with it the penetration of whatever his aim may be among the objects of the intellect. A further example of this we find when the rational faculty imposes on the appetitive sexual faculty something other than its essential aim and different from pleasure, *viz.* the imitation of the First Cause by way of the preservation of the species, and especially the most excellent of them, the human species; or when the rational faculty bids the appetitive faculty strive for food and drink not at random, but from the point of view of aims different from the mere desire for pleasure, namely, with the purpose in view of assisting the natural constitution to preserve an individual belonging to the most excellent species, *viz.* the human individual; or when it makes the faculty of anger wish to fight heroes and to embrace war for the sake of turning an enemy away from a flourishing city or a righteous people. Thus, sometimes actions result which appear to derive purely from the rational faculty, such as the conception of intelligible beings, the desire for high purposes, the love of the world to come and intimacy with the All-Merciful.

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[50] These two words are needed to reflect the full meaning of the one Arabic word.

[51] *Istiqrâ'*, cf. *Lexique* p. 303.

[52] *Tafakkur*, cf. *Lexique* p. 280, especially the quotation from Ibn Sina's *Livre des Théorèmes et des Avertissements*, p. 127.

(iii) There is some goodness in every part of the divinely established (p. 14) order, and each one of these goods is sought after. However, / the pursuit of one of these worldly goods often interferes with the acquisition of a good which is of greater value. Thus, it is generally accepted that an ample enjoyment of life pursued at random should be avoided, although it may in itself be desirable. For it would do harm to something more desirable than it, *viz.* the abundance of wealth and the sufficiency of property.[53] Here is another example taken from the functions of bodies: to drink an ounce of opium is desirable and good to stop bleeding of the nose, but nevertheless it should be flung away because of the harm it does to something more desirable than it, *viz.* good health in general and life. In the same way those characteristics of the animal soul which are considered as an excess when they are found in the non-rational animal,—however, in *animals* such an excess is not considered as a vice, but rather as an excellence of their faculties—, are considered as vices in the case of *man* because of the harm they do to the rational faculty; and it is proper to eschew them and to turn away from them. This I have explained in a treatise entitled "*The Present*" (*at-Tuhfah*).[54]

(iv) Both the rational and the animal soul—the latter by reason of its proximity to the former—invariably love what has beauty of order, composition and harmony, as for example harmonious sounds, harmoniously blended tastes of well-prepared dishes and suchlike. But, whereas in the animal soul this is due to natural instinct, in the case of the rational soul it results from its occupation with the conception of the ideas which are higher than nature.[55] It recognizes that the closer a thing is to the First Object of love, the more steadfast is it in its order, and the more beautiful in its harmony, and that what follows It immediately attains a greater degree of unity and of such qualities as result therefrom, *viz.*, harmony and agreement,—whereas, on the contrary,[56] the more remote a thing is from It, the nearer is it to multiplicity (p. 15) and such characters as follow it, / *viz.*, contrast and disharmony. This the metaphysicians have fully explained.[57] Whenever the rational soul obtains possession of a thing of beautiful harmony, it watches it with an eager[58] eye.

After having established these premises we can now make the statement that it is part of the nature of beings endowed with reason to covet a beautiful sight; and that this is sometimes,—certain conditions granted—, to be considered as refinement and nobility. This disposition is either specific to the animal faculty alone, or it results from a partnership [of the rational and animal faculties]. But if it is specific to the animal faculty alone, the sages do not consider it as a sign of refinement and nobility.[59] For,[60] it is an incontrovertible truth that when a man expresses animal desires in an animal-like fashion, he becomes involved in vice and is harmed in his rational soul. On the other hand, [this type of love] is not specific to the rational soul alone either, for the endeavour of the latter requires the intelligible and eternal universals, not sensible and perishable particulars. This [type of love], then, results from an alliance between the two.

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[53] Mehren translates: "*La munificence et la libéralité*" (resumé, p. 7), but this is not true to the text.

[54] Cf. on this Mehren's resumé p. 8 note 2.

[55] Or: ". . . with the comparison of the higher world with nature", cf. Mehren's resumé p. 8.

[56] In the text the phrase "on the contrary" has obviously got into the wrong place.

[57] For this Neoplatonic doctrine innumerable passages from the *Theology of Aristotle*, *the Liber de Causis* and the writings of the Brethren of Purity could be adduced. For al-Farabi cf. e.g., *as-Siyâsah al-Madaniyah*, pp. 2, 24 ff., 29; *Die Staatsleitung*, pp. 1 ff., 32 ff., 38. Cf. also the principle "*de uno nihil nisi unum*" of which Ibn Sina is an adherent (e.g. *Livre des Théorèmes et des Avertissements*, p. 173, M. Horten, *Die Metaphysik Avicennas*, (Halle, 1907), pp. 597, 610 ff., Carame, *op. cit.*, pp. 192 ff.

[58] Lit. azure.

[59] In *St. P.* the last two sentences are omitted.

[60] The following is to prove that this type

This is obvious also from another angle: If a man loves a beautiful form with animal desire, he deserves reproof, even condemnation and the charge of sin, as, for instance, those who commit unnatural adultery and in general people who go astray. But whenever he loves a pleasing form with an intellectual consideration, in the manner we have explained, then this is to be considered as an approximation to nobility and an increase in goodness. For he covets something whereby he will come nearer to the influence of That which is the First Source of influence and the Pure Object of love, and more similar to the exalted and noble beings. And this will dispose him to grace, generosity and kindness. For this reason one will never find the wise—those who belong to the noble and learned, and who do not follow the way of those who make greedy and avaricious demands[61]—to be free from having their hearts occupied with a beautiful human form. Therefore, if a man acquires over and above those perfections which humans have in addition [to (p. 16) those possessed by other beings] / the excellence of a harmonious form,—which derives from the integrity[62] and harmony of nature and from the exhibition of a divine impression—, then that man has the strongest claim to receive the very kernel of the fruit of the heart and the very essence of the purest kind of love. Therefore the prophet says: *Seek ye satisfaction of your needs in those of beautiful countenance*, the plain meaning[63] of which is that beauty of form is to be found only where there is a good natural composition, and that this good harmony and composition serve to improve the internal disposition and to sweeten the character. It does sometimes happen, however, that a man is ugly in external form and beautiful in internal disposition. In such a case only two explanations are possible: either his external ugliness is not due to an ugliness of harmony within lying in the very essence of the composition, but to an external accidental damage; or else the beauty of his internal disposition is not due to nature but to long habit. Similarly it sometimes happens that a man who is beautiful in external form is of an ugly disposition. In that case, again, only two explanations are possible: either the ugliness of his character is something that has happened accidentally to his nature after the completion of its composition, or it is due to a strong influence of habit.

Three things follow from the love of a beautiful human[64] form: (i) the urge to embrace it, (ii) the urge to kiss it and (iii) the urge for conjugal union with it.[64a]

As for the third, it is obvious that this is specific to the animal soul alone, and its hold on the latter is very strong, so much so that it maintains the position of a steady companion, more, of a master, and

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of love can result only from a "partnership" of the two faculties and not from either one of them in separation.

[61] *St. P.* adds: "and rush after blind desire".—The Cairo edition (p. 61) has a slightly different text, but the meaning is not altered.

[62] Lit. steadfastness.

[63] *St. P.* reads: "the plain and certain meaning".

[64] This word is added by *St. P.*

[64a] These same three urges are mentioned also in *Br. P. text*, pp. 496, 500; *Br. P. Weltseele*, pp. 74, 78.

(p. 17) certainly not of a tool. / It is very hideous. Rational love can, therefore, not be pure except when the animal faculty is altogether subdued.[65] With respect to the desire for conjugal union, it is fitting that a lover who entices the object of his love with this purpose in mind should be suspected, except if his need has a rational purpose, i.e., if his purpose is the propagation of the species. This is impossible with a man, and with a woman who is forbidden by religious law it is abominable. It is permissible and may find approval only in the case of a man with either his wife or female slave.

As for embracing and kissing, the purpose in them is to come near to one another and to become united. The soul of the lover desires to reach the object of his love with his senses of touch and sight, and thus he delights in embracing it. And he longs to have the very essence of his soul-faculty, his heart mingle with that of the object of his love, and thus he desires to kiss it.[65a] These actions, then, are not in themselves blameworthy. However, feelings and actions[66] of excessive lust happen to follow them frequently, and this makes it necessary that one should be on guard against them, except if the complete absence of physical appetite and immunity even from suspicion is beyond doubt. For that reason it is not reprehensible to kiss children, although this is in principle open to the same suspicion, on condition that its aim is to be drawn near toward each other and to be united, without secret thought of shameful corrupting things.

Whoever is filled with this type of love is a man of nobility and refinement, and this type of love is an ornament and a source of inner wealth.

VI.

The Love of the Divine Souls.

Whenever a thing which really exists penetrates or acquires some
(p. 18) good, / it loves the latter by its very nature, as for instance the animal souls love beautiful forms. Again, whenever a really existing thing penetrates with the senses or with the intellect a thing that is of advantage to its being, and whenever it is led toward it by natural instinct, then it loves that thing by its very nature, especially when the thing in question is of advantage for its specific being. Examples thereof are the love of the animal for food and that of children for the parent. Again, whenever it is evident to a being that it is conducive to an increase in excellence and rank to imitate a certain being, to come close to it and to establish a special relation with it, then the former will invariably love the latter by its very nature. An example thereof is the case of an apprentice and his master.

Thus we can say this: the divine souls, be they human or angelic, have no claim whatever to divinity if they do not acquire knowledge of the Absolute Good. For it is obvious that these souls are characterized by perfection only after they have gained knowledge of those objects of the intellect which are caused, and the only way to conceive these is to let their conception be preceded by knowledge of the true causes, especially that of the First Cause, just as it is impossible for the intelligible beings to exist, except if the causes themselves, and especially the First Cause, exist prior to them. All this we have explained in our commentary on the beginning of the first chapter of the *Physics*.[67]

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[65] I.e. reduced to a tool.

[65a] Similar ideas are elaborated in much greater detail in *Br. P. text*, pp. 496 ff., *Br. P. Weltseele*, pp. 74 ff.

[66] Lit. things.

The First Cause is identical with the Pure Good[68] which is absolute in Its essence. [This is proven in the following way:] reality[69] is absolute in It, and the reality of nothing that *is* is devoid of some goodness. Now goodness is either absolute and part of the essence or derived from something else. The goodness of the First Cause—which is good—will (p. 19) thus either be essential / and absolute, or derived from something else. But if it is derived from something else it can be so only in one of two ways: either the existence of Its goodness is necessary for the existence of the First Cause,—in which case that from which the goodness derives will be the cause of the First Cause, which is absurd; or the existence of Its goodness is not necessary for Its subsistence, and this is also absurd, as we have explained above.[70] Should we, however, not admit the absurdity of the latter alternative, then the question is still open. Namely, if we allow *this* goodness to be non-essential and eliminate it as such, then clearly Its essence still remains both existing and endowed with goodness. *That* goodness will either be necessary and essential or derived from something else. If the latter alternative is accepted, we are reduced to an infinite regress which involves an impossibility.[71] If, on the other hand, this goodness is posited to be essential, then we have arrived at what we search for.

Again, it is impossible that the First Cause should derive from somewhere a goodness which is not part of Its essence and does not necessarily belong to It. For the First Cause necessarily achieves perfection by its very substance. For if the First Cause did not from Its own essence completely receive all those qualities which in their relation to It really merit to be classified as "goodness", and if there was some element of potency in Its goodness, the First Cause would derive this goodness from something else. But since there is nothing outside It except the sum of the things caused by It, that from which It would derive goodness would be something caused by it. Now that which is caused by it has no goodness either in its nature or in its derivations apart from that which is derived from the First Cause. Therefore, if that which is caused by It is to bestow by emanation goodness on It, it can bestow only such goodness on It as is derived from It to begin with. But, in the case at hand, the goodness derived from the First Cause is to have its ultimate origin in something else. In that case, this goodness would have to be not in the First Cause but in something (p. 20) outside It from which the First Cause would derive it. / But it has already been said that it *must* be in the First Cause. Thus the whole suggestion [that any goodness in It is non-essential] is absurd.

In the First Cause there can be no defect of any kind or in any respect. [This is proven in the following way:] a perfection which is the opposite of a defect is (i) either impossible, and in that case there can be no defect correlative to it, or (ii) it is possible. Now, to conceive the possibility of that type of thing whose existence does not rest in anything else[72] is to conceive along with that thing itself the *cause* which leads to actual achievement that which in itself has merely the potency for it. But we have already made clear that the First Cause has for Its perfection no outside cause of any kind or in any respect. Thus, there is no real possibility to a "possible" perfection in It, and consequently no defect correlative to it. The First Cause achieves *per se* completely anything that may, in its relation to It, be characterized as good. Those exalted goods which are good in every respect are not relative, and this is the type of good to which the First Cause has a relation of complete possession.

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[67] Cf. Mehren's resumé p. 10 note 1.

[68] Cf. the chapter in *an-Najjâh*, p. 229, entitled: "That that which exists necessarily *per se* is the Pure Good". Cf. *supra*, note 9.

[69] *Haqîqah*, cf. *Lexique* pp. 82 ff.

[70] Cf. *supra*, p. 214.

[71] The Aristotelian doctrine of the impossibility of an infinite regress (cf. e.g. *Physics* 209 a 25, 210 b 27, 256 a 13 ff.) is commonly accepted in Arabic philosophy, cf. e.g. al-Farabi, *Philosophische Abhandlungen*, p .78.

It is clear, then, that the First Cause possesses *per se* the complete sum of those perfections which in relation to It deserve that name, and that there is no element of possibility in It. It is also clear that the First Cause is good not only in Its substance but also in Its relations to all other beings, because It is the First Cause of their existence and preservation, more especially, of their being and their desire for their respective perfections. Therefore, the First Cause is good, absolutely and in every respect.[73]

The perfection of both human and angelic souls lies in two things: (p. 21) (i) the conception / of those intelligible beings to which they have a possible relation,—each according to its capacity; this is in an effort to become assimilated to the essence of the Absolute Good[74]—, and (ii) in the consequent emanation from them of such actions as are in harmony with their nature, and as are just in relation to the latter. Examples of such actions are noble deeds of men, and the movements imparted to the high substances[75] by the angelic souls whose purpose is to preserve generation and destruction,[76] again in an effort to become assimilated to the essence of the Absolute Good. These imitations occur for no other purpose than to make possible an approximation to the Absolute Good, and in order that from this proximity excellence and perfection should result. Now this can happen only by reason of help given by It,[77] and they conceive this as coming from It. And we have already explained[78] that in such a situation a being loves the thing toward which it moves. According to the preceding discourse it is necessary, then, that the Absolute Good should be loved by all souls endowed with a divine nature.

This love exists in them without ever ceasing. For they are always either in the state of perfection or in that of preparation.[79] We have already explained[80] that love exists in them of necessity whenever they are in the state of perfection. As for the state of preparation, this is to be found only in human and not in angelic souls. For the latter possess eternally the perfection in which their existence rests. The former

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[72] Lit. "the thing which is not in any other thing", i.e. substances. The qualification is made because in the case of accidents it is not possible to speak of causes in the proper sense of the term.

[73] Cf. the explicit treatment of this whole doctrine in the eighth treatise of the *Metaphysics*, Horten, *op. cit.*, pp. 474 ff., and the first treatise of the second part of the *Compendium*, *an-Najjâh* pp. 225 ff., Carame, *op. cit.*, pp. 66 ff.

[74] This phrase, based on a passage in Plato (*Theaetetus* 176 B), is commonly used by all Neoplatonists, cf. Fackenheim, *art. cit.*, p. 115 note 4, al-Farabi, *Philosophische Abhandlungen* p. 70.

[75] I.e. the heavenly bodies.

[76] Cf. Horten, *op. cit.*, pp. 558 ff., 609 ff.; *an-Najjâh* pp. 280 ff., Carame, *op. cit.*, pp. 202 ff.

[77] *B.M.* reads instead: "by reason of desire for It."

[78] Cf. above p. 222.

[79] *Isti'dad*, cf. *Lexique* p. 211.

[80] Cf. *supra*, pp. 222 ff.

which can be in the state of preparation are, while they are in that state, filled with a natural desire for the knowledge of the intelligible
(p. 22) beings which is their perfection, / especially for the knowledge of that to conceive which is most effective[81] for the acquisition of perfection. This leads to the conception of what is similar to It,[82] and this quality of the First Object of the intellect is the cause whereby all other objects of the intellect become object of the intellection of the souls, and it is the cause of their existence also.

It is not an absurd thing to say that these souls have a love inborn in their nature for Absolute Reality primarily and for the other objects of the intellect secondarily. If this were not so, their specific states of preparation for their respective perfections would be without effect.

Therefore, the real object of the love of both human and angelic souls is the Pure Good.

VII.

General Conclusion.

We want to show in this chapter (i) that every single being loves the Absolute Good with an inborn love, and (ii) that the Absolute Good manifests Itself[83] to all those that love It. However, the capacity of the latter to receive this manifestation differs in degree, and so does the connection they have with It. The highest degree of approximation to It is the reception of Its manifestation in its full reality, i.e., in the most perfect way possible, and this is what the Sufis call unification (*ittihâd*).[84] In Its excellence It desires that Its manifestation should be received, and the existence of things depends on it.

Thus we say: since every being has a natural love for its perfection, —and "perfection" means the acquisition of its goodness—it is obvious that the term by reason of which its goodness results to the thing—no matter what the situation and form of realization—should of necessity /
(p. 23) be loved as the source from which its goodness stems. But as far as this function is concerned, there is nothing more perfect than the First Cause and nothing prior to It. It follows that It is loved by all things. The fact that most things do not know It does not contradict the fact that love of It is inborn in them,—a love which is in these things directed toward their perfections. As far as Its essence is concerned, It is revealed and manifest to all beings. If It were in Its nature veiled from all things and not manifested to them, It could not be known and nothing could be obtained from It. If, on the other hand, It were manifested, but only under the influence of something else, there would have to be an external influence in Its essence which is too exalted to be subjected to such an influence; and this is impossible. [The truth is this]: as far as Its essence is concerned, It manifests Itself. If it appears veiled, this is due to the impotence of some things adequately to receive Its manifestation. Thus, in truth, the veil lies in those which are veiled, and this veil consists in impotence, weakness and defect. As far as Its

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[81] Lit. "most useful" or "most lasting".

[82] I.e. the other intelligences.

[83] *Tajallâ*, cf. *Lexique* p. 47 where the present passage is quoted.

[84] Cf. also the following passage found in the writings of the Brethren of Purity (*Br. P. text*, p. 493): "Some scholars are of the opinion that love (*'ishq*) is an extremely strong desire toward unification (*ittihâd*). This is of all the discourses the most correct, weighty and profound." Cf. *supra* p. 210—For the use of the term *ittihâd* in Ibn Sina cf. Goichon, *Introduction à Avicenne*, p. 181.

manifestation is concerned, this is nothing short of Its essence itself. For, as the metaphysicians have expounded,[85] as far as It *per se* is concerned, It never manifests Itself except in Its pure unmingled essence. It is Its noble essence itself which manifests itself, and for that reason the philosophers have called It "the Form of the Intellect".[86]

The first recipient of this manifestation is that divine angel[87] who is called the "universal intellect". His substance receives His[88] manifestation in the fashion of a form reflected in a mirror so that the individual of which it is an image becomes manifested. Related to this concept is what has been said with regard to the agent intellect being an image of It. And one must be careful to say that it is Its image, i.e., of the Necessary and True.[89] Everything that is brought into being by some immediate cause comes into being through the mediation of an image occurring in the universal intellect[90] under Its influence. This is proven by induction.[91] For instance, the heat of the fire exerts its influence on a body only through the mediation of its image, namely, heat.[92] The same (p. 24) thing holds for other types of faculties. / A rational soul acts upon another rational soul by imposing upon it its image, namely, the intelligible form. The sword cuts by imposing on whatever it effects its image, its shape. The whetstone sharpens the knife by putting into its edges the likeness of that part with which it touches it, namely, smoothness.

Should anyone raise the objection that the sun causes heat and blackness without these being its images, we would say in reply: we do not claim that *every* influence of an agent on that which it affects takes place in such a way that an image of the original quality which exists in the agent proceeds from the latter to the affected entity. What we do claim is that the influence of the *immediate*[93] agent on the affected entity is mediated by an image occurring in the latter under the influence of the former. This is also the case with the sun; for it, too, acts on the *immediately* affected entity by way of imposing on it its image, namely, brightness. In that affected entity a new quality arises under the influence of this brightness, namely, heat. And what is thus affected, in turn affects with heat another entity, by imposing on it its image which is *its* heat. Thus, with the occurrence of heat, it heats and blackens. This much can be concluded from induction. But as for a general demonstration,[94] this is not the place for it.

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[85] Cf. e.g. al-Farabi, *Philosophische Abhandlungen*, p. 79; *Der Musterstaat*, p. 16; *Die Staatsleitung*, pp. 22 ff.

[86] We have not been able to find this formulation in a pre-Avicennian writer. It is found, however, in St. Thomas (*Comp. Theol.* c. 105, ed. Mandonnet, vol. ii, p. 70: *Deus forma intellectus*), who uses it without referring to a source; and Maimonides uses a similar phrase (*Moreh Nebukhim*, part I, chapter 69: "God . . . is the form of the universe").—The doctrine basic to this formulation is a synthesis of Aristotelian and Neoplatonic doctrine: according to Aristotelian doctrine God is the ultimate form (cf. numerous passages in numerous writers); according to Plotinus the entity higher in the hierarchy is the cause of the lower one, and in certain cases it may be said that the higher is the "form" of the lower (*Enn.* V, 9, 3: intellect is the "form of the soul"); however, the One cannot be termed "form of the intellect", because the term form implying duality is inapplicable to the One.—Al-Farabi's doctrine would permit him to call God the "form of the intellect". For, on the one hand, he accepts the principle that "the more perfect is the form of the less perfect" (*Philosophische Abhandlungen*, p. 46) and, on the other hand, he does not hesitate to call the First and absolutely Simple Principle from which the mover of the first heaven receives its nature "First Intellect" (*Risâlah fi'l 'aql*, ed. M. Bouyges, (Beyrouth, 1938) p. 36. And, of course, every intellect is a form.

[87] Cf. *supra*, note 16, also notes 88, 104.

[88] We must use here the personal pronoun as an angelic person cannot very well be made to depend on a impersonal first cause.

[89] This translation is somewhat awkward, as far as the text is concerned, but it is the only one compatible with Ibn Sina's doctrine.

[90] The text itself is ambiguous: ". . . an image occurring from it in it . . ." Our interpretation is shared by Mehren (resumé, p. 13).

[91] Cf. *supra*, note 51.

[92] *B. M.* reads: ". . . through the mediation of an image occurring from it in it, namely that it imposes on it its image, namely, heat . . ."

[93] Lit. closest.

Returning now to our actual subject, we say this: the agent intellect receives the manifestation[95] without mediation, by penetrating its[96] essence and that of the other intelligible beings through it, which it does *per se*, actually and eternally. For those entities which conceive the intelligible beings without the assistance of sense-perception or imagination cognize what is posterior as implied in what is prior, what is caused as implied in that which causes it, and the inferior as implied in the superior.[97]

Next, the divine souls receive the manifestation, again without mediation. Or rather, if we say mediation, we mean the assistance given by (p. 25) the agent intellect which leads from potency / to act and procures the means of forming and preserving conceptions.

Next, the animal faculty receives it, then the vegetative one and then nature.[98] Every entity which receives the manifestation does so with the desire to become assimilated to It to the full extent of its capacity.[99] Thus the natural motions of the natural bodies imitate It in their aims,—which is to remain in the positions specific to them when they have reached their natural places—, even if they have no resemblance to that aim in their beginning, namely, motion.[100] In the same way, the animal and vegetative substances imitate It in their aims when they carry out the actions specific to them. The aim is here the preservation of the species, or that of the individuals, or the development of the power and strength of the latter and suchlike, even though in their beginnings aims such as sexual intercourse and nutrition have no resemblance to It. In the same way the human souls perform their good activities, both intellectual and practical, by way of imitating It in their aims. This assimilation is brought about by the exercise of justice and intelligence. However, there is, again, no resemblance to It in the beginnings of these aims, e.g., self-instruction and suchlike. The divine angelic souls, too, imitate It when they perform their motions and other activities whereby they maintain the continuity of generation and destruction, and of sowing and reaping.[101]

The reason why the animal, vegetative, natural[102] and human powers resemble It in the *aims* of their activities but not in the *origins* of the latter, lies in the fact that these origins are merely preparatory and potential states,—and the Absolute Good must be declared free from any community with states of preparation and potency—, whereas their aims are actual perfections, and to the First Cause absolute actual

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[94] *Burhân*, cf. *Lexique* pp. 21 ff.

[95] It would seem that this refers to the manifestation of the "universal intellect".

[96] Because of our interpretation of this passage (cf. note 95) we do not use the capital letter.

[97] Cf. e.g. Horten, *op. cit.*, pp. 520 ff.

[98] I.e. inorganic nature; the last three words are omitted by *St. P.*

[99] Cf. *supra*, note 74.

[100] *St. P.* reads instead: ". . . and the heavenly and elementary bodies have in the beginning this aim, namely, motion." Possibly this passage is corrupted. Mehren interprets it as follows: *ainsi les corps élémentaires ne se meuvent qu'en imitant les êtres sublimes dans leur efforts pour arriver à leur but, lequel, quoique fort différent au commencement, est, pour ces corps, de maintenir leur positions une fois fixées, et, pour les corps célestes, de conserver leur mouvements.* (resumé, p. 14).

[101] The word *nasl* means literally "offspring". Our translation is intended to preserve the idiomatic character of the phrase without deviating unduly from the literal meaning. Cf. *supra*, note 46.

[102] I.e. elemental.

(p. 26) perfection must be attributed. / Thus, it is possible that they should resemble It in the perfections which are their aim, but it is impossible that they should resemble It in their incipient states of preparation.

As for the angelic souls, they acquire resemblance to It in the forms of their essence and thus possess it eternally in complete actuality. For they contemplate It eternally and love It eternally, inasmuch as they contemplate It. And they are assimilated to It eternally inasmuch as they love It. Their desire lies in their penetration and conception of It,—the most excellent kind of penetration and conception. On account of these they turn away from the direct penetration of everything else and from the direct conception of what is similar to It among the other intelligible beings. However, true knowledge of It becomes indirectly also the knowledge of the rest of existence. They conceive It, as it were, purposely and with desire, and what is similar to It concomitantly.[103]

If it could happen that the Absolute Good did not manifest Itself, nothing could be obtained from It, and if nothing were obtained from It, nothing could exist. Thus, there can be nothing if Its manifestation is not present, since it is the cause of all existence. Because It, by Its very nature, loves the being of what is caused by It, It desires to manifest Itself. And since the love of the Most Perfect for Its own perfection is the most excellent love, it has as its true object the reception by others of Its manifestation, and this is most properly its reception by those divine souls which have reached the highest degree of assimilation to It. In this way it is possible that they become the object of Its love. This is the meaning of the tradition: *God hath said: the servant of such and such a quality loves Me, and I love him.* Just as wisdom in general will not allow anything that is precious in some respect to be overlooked, even though it fall short of the peak of excellence, the Absolute Good desires in Its wisdom that things should obtain some of Its gifts, even though the degree in which they will be obtained will not reach perfection. Thus, the Exalted King[104] desires
(p. 27) that others should imitate Him, in contrast with earthly[105] kings / who become angry when someone dares to imitate them. For the Exalted King will not bid those turn back from their aim who desire to imitate Him, whereas earthly kings will.

As we have now completed the task of this treatise we conclude it at this point. God is the Lord of all the worlds, and it is with His help alone that this treatise has been completed.

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[103] Cf. *supra*, p. 225.

[104] Cf. *supra*, notes 16, 87 and 88.

[105] Lit. kings that pass away.

The Writ of Prohibition to Court Christian in the Thirteenth Century. II.

G. B. FLAHIFF C.S.B.

TWO topics have already been dealt with in this study of the writ of prohibition in the thirteenth century: first, the exact nature and the different forms of the writ; secondly, the historical conflict between royal and ecclesiastical authorities over the use and abuse of prohibitions.[1] The present article treats of the actual procedure in matter of prohibition: the issue of the writ by order of the king and its reception by the ecclesiastical court, and then the steps of procedure in the subsequent plea of prohibition, if the writ is not obeyed.

The second half of the twelfth century and the first three quarters of the thirteenth constitute an extremely important epoch in the history of English legal procedure. It is the high period in the development of the writ-system with its written and authoritative formalism characteristic of mediaeval English procedure. At the very moment, Maitland has remarked, when the other nations of Western Europe were beginning to adopt as their own the ultimate results of Roman legal history, England was unconsciously reproducing that history.[2] For, while the renaissance of Roman law was causing the impact of Justinian's mature law to be felt in these countries, England was, for her part, developing a formulary system not unlike that earlier Roman experience which had become long since obsolete in the time of Justinian. Not that it owed its inspiration to Rome;[3] on the contrary, the movement in England was quite spontaneous and its evolution eminently empirical. This is not the place to recount the extraordinary growth of the writ-system during those years of the twelfth and thirteenth centuries.[4] Suffice it to note, for what concerns procedure, the intimate link between writ and action; to choose a writ was at the same time to choose an action, for it was the writ in each case that initiated the action and gave it its direction even to the very formulae to be used in court. If some new need made itself felt, a new writ would have to be created and with it a corresponding form of action. Hence the great increase and ramification of writs during this period. One of these writs was the Writ of Prohibition to court christian.

We are concerned here with the procedure in connection with the writ of prohibition only; to this we shall confine ourselves. Indeed, from what has just been said, it is obvious that this is all that can be done; there is no such thing in mediaeval English law as a general or common procedure like Roman or canonical procedure or like that of modern England. Procedure varies with each type of action. At the same time, however, actions are not so diverse that each one differs completely from the next; all personal actions, for example, have certain family features in common which distinguish them from real actions, as also civil cases have common traits differentiating them from criminal. That is why, although we are describing here the procedure in a plea of prohibition only, we shall nevertheless be presenting many features common to other actions that are likewise personal actions in civil matter. And finally, since the majority of prohibition pleas are pleas sued before that part of the king's court which sits at Westminster (*placita de banco*), the procedure will be that of this court rather than of the court which follows the king (*placita coram rege*).[5]

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[1] *Mediaeval Studies*, VI (1944) 261-313.

[2] F. Pollock and F. W. Maitland, *History of English Law* (2nd ed., London, 1898), II, 558; cf. H. Brunner, *Geschichte der Englischen Rechtsquellen* (Leipzig, 1909), p. 30.

[3] Pollock and Maitland, *op. cit.*, II, 559-561.

[4] See references given in preceding article, *Mediaeval Studies*, VI (1944) 263-264.

Two or three preliminary observations appear to be indispensable. In the first place, it should be noted that the records preserved for us do not provide a complete picture of the steps in procedure for every case that comes before the king's court; indeed rarely is it possible to follow any one case through all these steps. This is due in part to the fact that the rolls of the *curia regis* for the years prior to 1272 are far from complete.[6] Even where rolls are available for several consecutive terms, it is still frequently impossible to follow a case to its close, either because it drags out so long that a lacuna in the documents does finally interrupt the course of the plea's history, or because of some other reason which remains obscure.[7] In addition, failure on the part of the plaintiff to appear, a premature understanding between the parties, these and other circumstances may put a sudden end to the judicial action. To resume, the example of a case passing through all the stages of procedure possible to an action in the king's court is the exception. Hence, the picture of procedure to be drawn in this article will be necessarily an ideal one. The concrete examples used for illustration will be taken from many different records, in order to present as a composite whole a lengthy process which no single one of them furnishes.[8]

This leads to a second observation. Even among the cases that are more or less complete, there is to be found a considerable variety in the conduct of the action. The first stages are usually classic: a writ of prohibition that is not deferred to, interminable efforts to oblige the defendant to appear in the king's court and, when this has been achieved, the plaintiff's declaration against his adversary. But from this point on, cases vary widely. There are any number of exceptions that may be opposed to the validity of the plaintiff's declaration; the ways of defending oneself are likewise numerous and varied; proof on either side may be brought in different ways. Each case, it might almost be said, presents an aspect peculiar to itself, rendering it difficult to generalize on the procedure even where actions have the common characteristic of centring around a writ of prohibition.

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[5] For most of the thirteenth century, it is hardly necessary to make this distinction. Slightly later there will be very considerable differences between these two branches of the King's Court, but down to the third quarter of the century, their personnel and the pleas they hear as well as the procedure they follow are not sharply distinguished. Thus, while the majority of prohibition pleas are heard at Westminster, sometimes they come before the court that follows the king, without there being any obvious reason why they should. If any features arise in the course of the article peculiar to the latter court, attention will be drawn to them as differing from the procedure before the bench at Westminster.

[6] There are, for example, no rolls for the years between 1245 (Trinity) and 1249 (Michaelmas), and likewise none between 1255 (Michaelmas) and 1258 (Michaelmas), while the lacunae for one, two or three terms of a same year are particularly frequent.

[7] It is very common to find in the plea rolls a blank space of some length after a record of the early stages of a plea; the space was undoubtedly reserved for enrolling the final result, but for some reason or other the record has remained incomplete. The Stafford Record Society has published the entries in the plea rolls relative to Staffordshire for the reigns of Richard I, John and Henry III (*Staffordshire Historical Collections*, vols. III, IV, VI). This should make it possible, one would think, to follow the steps of an action even though spread over several years. Yet, of the seven cases arising from writs of prohibition, only three are concluded. And of the three a single one presents an action passing through several stages; in the other two cases, although the record provides us with the final decision, there is no previous entry to inform us of what had already transpired in the suit. In the *Extracts from the Curia Regis Rolls Relating to Leicestershire* has been published a similar series of texts for the years 1211-1272. The extracts contain but four cases relative to prohibitions, of which one only is terminated. See below p. 270, n. 37 for a possible explanation of some of the blank spaces that occur.

[8] Abundant citations from the plea rolls are given in notes and in appendix which should keep the reality before the reader's eyes and prevent the more or less ideal picture from becoming a false one.

Thirdly, as will be easily surmised, there is a notable evolution in English procedure during the years covered by this study. It can be sensed in the very records of proceedings contained in the plea rolls. The entries, made by the scribe as he sees and hears a plea sued before him, and influenced therefore by the actual proceedings, are an excellent index of development in the mode of court procedure. Freedom and spontaneity mark the earlier entries of the plea rolls. There is evidently a certain feeling around; set formulae are lacking; the minutes are simple and straightforward, indicative of the equally simple and natural proceedings which they record. Then gradually they grow stiffer, more formal; expressions become stereotyped.[9] The way is being prepared already for the excessive formalism of the fourteenth and fifteenth century whose intransigence will frequently prove an obstacle to the course of justice. While it is not difficult to recognize this general trend in the development of procedure, it is not so easy to fix chronological periods in its history, because of the very gradual appearance of changes. Let it suffice therefore to observe that, during the reigns of Richard I and John, the formalism is decidedly less pronounced. From the start of Henry III's reign, however, an evolution is noticeable. By 1240 or 1245, the form of the minutes of the court is well nigh fixed;[10] changes from then to the end of the century are but slight. Procedure followed very probably a similar course. What characterizes the development of the late thirteenth century and of the fourteenth and fifteenth is the growth of the science of 'pleading'. The Year Books,[11] a new source of legal history, show forth admirably the evolution of this typical feature of English procedure, which lies, however, beyond the scope of the present study.

In following the workings of the writ of prohibition, it will be necessary to consider both the ecclesiastical and the royal court. They might be treated separately; but the account will be livelier if they are fitted in together, so as to present in chronological order what takes place in the one court and in the other. Besides, this is also the more logical method, since what takes place in one court may determine what will take place next in the other. The danger of confusion is reduced by the fact that the court christian plays a role only in the first stages of the writ's workings.

The present article is divided into two parts: the first part treats of all that precedes a prohibition plea in the king's court, that is to say, the original action before ecclesiastical judges, the issue of the writ of prohibition and the reception accorded it in court christian; the second part deals with the plea of prohibition, when the royal writ has not been deferred to and the judges or party in the ecclesiastical action are summoned to explain why they have proceeded contrary to a prohibition.

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[9] The pleas published as an appendix to the article illustrate this change; see pp. 283ff.

[10] It is interesting to note in passing that these years of the greatest development coincide roughly with those of Henry III's minority, an important period in the shaping of the Common Law.

[11] These might almost be termed the 'Law Reports' of the Middle Ages. They provide an account, often very dramatic, of the proceedings before the court. Drawn up by students or apprentices—such was the case in the beginning at least—they were meant for the use of professional pleaders. The first of the Year Books which has been published is that of 1292 (*Year Books of the Reign of Edward I and Edward III*, Rolls Series, London, 1866), but there are probably older ones in manuscript form, dating from the reign of Henry III; cf. W. S. Holdsworth, *A History of English Law*, vol. II (3rd ed., London, 1923), p. 526. Perhaps the *Additional Manuscript* 38821, fol. 111v and following offers such an example; see the description in *Additions to the Manuscripts of the British Museum* (1911-1915), p. 261.

I.

A. *The Issue of the Writ of Prohibition*

The point of departure for a writ of prohibition is always a judicial action initiated before an ecclesiastical tribunal. The defendant is cited to appear. If he deems that the matter of the case is not of spiritual jurisdiction, he may refuse to answer the summons and may even at this stage sue for a royal writ of prohibition to stay the proceedings of the court. On the other hand, he may wait until he is menaced by the ecclesiastical judges with spiritual penalties for contumacy before seeking the prohibition. Or he may possibly obey the citation and present in court christian his objection or 'exception' to the effect that the court has no jurisdiction over the matter in question; then, if the judges refuse to admit his exception and proceed further against him, he can still have recourse to the king's writ of prohibition. Indeed the case is not infrequent where the defendant submits to the Church's jurisdiction and the action is already approaching its conclusion[12] before he decides to question the competence of the court and seek a writ of prohibition.[13] Of course, his motive in having the ecclesiastical action arrested may not always be completely disinterested; there are cases where he would evidently be quite willing to submit to the spiritual jurisdiction, were it not for the fact that the case promises to turn out badly for him in court christian; in still other cases it is beyond doubt that he seeks a writ of prohibition with no other intention than to avoid the ecclesiastical action and without any concern as to the competent jurisdiction.

At whatever moment and for whatever motive he may choose to sue for a prohibition, the procedure of the defendant will always be the same. It is he who must take the initiative; the king's writ is at his disposal, but it is up to him to avail himself of it. While the theory of the royal prerogative would maintain that the king has always the right to forbid church courts to hear pleas that are of royal jurisdiction, nevertheless the writ of prohibition as a legal instrument is always moved for by the litigant.[14]

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[12] Miss Norma Adams has noted that, since the remedy provided for a litigant by the writ of prohibition is preventive and not remedial, it must be used before the final sentence is pronounced in the church court; 'The Writ of Prohibition to Court Christian', *Minnesota Law Review*, XX (1936) 278.

[13] An example for the year 1224 may be found in KB 26/86 m. 5d (published by W. Prynne, *Records*, London, 1666, III, 60). The party who has sought the writ of prohibition admits before the king's court that he had presented himself in court christian and that the action there had even reached the stage of introducing witnesses before he decided to have it stopped by means of a prohibition. The Michaelmas roll of 1233 (KB 26/163 m. 9d) furnishes a similar case. According to Bracton, a prohibition has no value under these circumstances, at least in so far as the one demanding it is concerned; but it still has force against the action in court christian if the case being tried there ought really to be of royal jurisdiction: 'Item locum non habet prohibitio ubi quis de facto et consensu suo proprio effectus est alterius jurisdictionis, scilicet quantum ad se ipsum, sed non quantum ad regem ad quem pertinet jurisdictio' (*De Legibus et Consuetudinibus Angliae* ed. Woodbine, vol. IV, New Haven, 1942, p. 268).

Interesting varieties of this case are found to occur. Sometimes the one demanding the writ of prohibition has not only submitted to the Church's jurisdiction but, having lost the first suit there, has even appealed to a higher ecclesiastical authority, with the same ill success however; cf. *Bracton's Note Book* ed. Maitland (London, 1887), II, 422, no. 544, and 585, no. 766. This latter case has a marginal note to the following effect: 'Nota quod qui tulerunt prohibitionem appellaverunt ad alios judices et per appellatum factum sunt consentientes; unde (rei) sine die.' A like example is provided by KB 26/106 m. 15 (Trinity 1230). A curious twist comes into a case of the year 1233 (*Bracton's Note Book*, II, 618, no. 808): the party seeking the writ of prohibition had been originally the plaintiff in court christian over some grain which had been stolen; then he became defendant before the same court on the charge of another person with reference to the same matter; whereupon he determined to ask for a prohibition since it was question, he said, of lay chattels.

[14] Flahiff, 'The Writ of Prohibition . . .',

His request for the writ must be accompanied by a detailed and precise complaint about what has taken place. It is not enough to say that the ecclesiastical court has overstepped the limits of its jurisdiction; he who sues a writ of prohibition must state clearly that he was cited to appear before such and such judges as defendant in a plea that a certain party (giving his name) had sued against him regarding such and such a matter.[15] The nature of the plea in court christian must be mentioned precisely. True, the easily obtained *de cursu* writs require no more exact characterization of matter than *placitum de laico feodo*, *placitum de advocatione*, *placitum de catallis etc.*,[16] but there must be no mistake as to which one of these it really is, for, if the writ of prohibition speaks of a plea in court christian for chattels and the action turns out in reality to have been one of lay fee, or if the writ mentions lay fee whereas it is actually advowson, the writ will be deemed as of no value whatsoever, even in the king's court.[17] And the person who has obtained the writ will get nothing for his pains; on the contrary, he is in grave danger of being amerced by the royal justices *pro falso clamore*.[18]

Writs of prohibition were accorded upon the complaint of a party without any attempt on the part of the royal authority to ascertain the true state of affairs. Such is the conclusion to which we are led, for the thirteenth century at least, by the surprisingly large number of cases where a plea in court christian that has been arrested by a prohibition proves upon examination of it in the subsequent plea in a royal court to be really of ecclesiastical jurisdiction.[19]

Mediaeval Studies, VI (1944) 286-287; also 'The Use of Prohibitions by Clerics,' *Med. Studies*, III (1941) 109-110, n. 40. It should perhaps be observed that the king himself could as a private person move for a writ of prohibition and then be litigant in his own court just like one of his subjects; the case where he claims a certain advowson is perhaps the most frequent of occurrence.

[15] Bracton, *De Legibus* ed. Woodbine, IV, 252. The writ of prohibition, when issued, mentions each one of these facts.

[16] It was possible to obtain a writ for a more exceptional case not included in these categories. The *de precepto* writs met just this need. But, as has been seen already (*Med. St.*, VI, 267-268), there is no evidence for the use of this more exceptional type before the year 1240 or so. It must, of its very nature, have been always more difficult to obtain. The *de cursu* writs could be had more easily, hence it would be but natural that suitors try to represent a plea as entering into a category for which there was a *de cursu* writ. Judges must have allowed a considerable latitude in their interpretation since all cases relating to prohibition contained in the plea rolls up to the middle of the thirteenth century are of the three stock types: chattels, lay fee and advowson. Even after the sharpening of the juridical sense with accompanying finer distinctions had brought in the *de precepto* writs, the great majority of cases still came under the three main heads. It is therefore not untrue to say that in the normal case the person seeking to arrest an action in court christian characterized the plea as one for which there existed already a writ of prohibition.

[17] Examples of this are not lacking; the following one taken from the plea roll of Hilary 1244 states the principle quite clearly: 'Postea quia predictus Henricus non potuit ostendere quod predictus archidiaconus ipsum implacitavit de alio laico quam de predicta advocatione, et est breve domini regis specialiter formatum quando aliquis implacitatur in curia christianitatis de advocatione alicujus ecclesie, consideratum est quod predictus archidiaconus inde sine die et predictus Henricus perquirat sibi per aliud breve versus eum si voluerit' (KB 26/132 m. 12). Even the finer distinction between debts and chattels could sometimes make a writ worthless; thus in 1222 a writ of prohibition speaking of debts is considered as of no value because it is a case merely of chattels: 'quia breve loquitur de debito et comes cognoscit quod nullum debitum ab eo exigit, consideratum est quod precentor non respondeat ad hoc breve et ideo sine die' (*Bracton's Note Book*, II, 127, no. 152). The need of specifying the nature of the plea in court christian very clearly is illustrated again in a case from the plea roll for 1230, where it is stated that the plea had been regarding both lay fee and chattels and that therefore two writs of prohibition had been obtained: '. . . placitum in curia christianitatis de laico feodo et de catallis ipsorum in Exonia contra prohibitionem per duo brevia . . .' (KB 26/107 m. 33).

[18] The decision in a plea of the year 1233 is given thus: 'Et quia breve loquitur tantum de layco feodo, et secta testatur quod de catallis, ideo consideratum est quod Magister Robertus inde sine die, et Willelmus in misericordia' (*Bracton's Note Book*, II, 583, no. 762; see also 127, no. 152, etc.).

[19] Cf. Stubbs, *Constitutional History of England* (London, 1880), III, 374. The teaching of Bracton on writs which, even though issued in good faith by the chancery, are to be considered as 'having no place' because the matter is truly spiritual is further

The conclusion is strengthened by the absence of any mention of a preliminary enquiry in the legal treatises of the thirteenth century, whether that of Bracton or the later ones known under the names of *Fleta* and *Britton*.[20] Indeed it is because of the abuses arising from such a procedure that petitions are brought before parliament in the fourteenth century begging that writs of prohibition should not be granted until a libel or some trustworthy document of the ecclesiastical court has first been examined in the chancery and the decision made that the cognizance pertains to the secular court. Even so, the king's non-committal answer is to the effect that writs will henceforth issue as they have been accustomed to issue.[21] However, as far as the thirteenth century is concerned,[22] it is clear from the practice revealed in the documents of the time that to obtain a *de cursu* writ of prohibition it was sufficient to ask for it and pay for it.[23]

The writ issues from the royal chancery. All extant formulae of the writ itself are in the king's name; nor is this surprising, since a prohibition represents an exercise of the royal prerogative in judicial matters. Nevertheless, it is not improbable that, at the beginning of the thirteenth century, the chief justiciar and the justices of the *curia regis* did issue such writs in their own name. The plea rolls for the early years of John's reign use frequently the expression, *contra prohibitionem justiciariorum*,[24] or *contra prohibitionem domini justiciarii*.[25] From 1200 to 1205, the mentions of *prohibitio domini regis* are fewer than these others. Thus, for the year 1201 for example, of the four cases stating the fact,

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evidence in favour of the hypothesis put forward. So too is the existence of a system of 'consultation' (pp. 238-241 below) in order to determine whether a given prohibition must really be accepted as binding or not. The examples cited in no. 17 of cases where the true nature of the action in court christian proves to be other than what has been stated in the writ of prohibition is one more argument to support the hypothesis.

The *Curia Regis Rolls* for the reign of King John do, it is true, present certain cases where two parties appear before the king's justices to dispute about the one having been haled unjustly into court christian by the other, without there being any mention made in the minutes of a writ of prohibition; and sometimes the discussion is followed by an order of the royal justices forbidding the action in the ecclesiastical court to proceed. (*Curia Regis Rolls*, II, 62; also *Placitorum Abbreviatio*, p. 33). This might look at first sight like a preliminary enquiry into the facts of the case before the issue of any prohibition; but, on closer study, these minutes resemble exactly those of a plea in the king's court against one who has refused to defer to a royal prohibition already sent out. It is not surprising that the entry happens to make no reference to this first prohibition, since the scribes of the first years of the thirteenth century do not show that scrupulous attention to detail which characterizes their successors. The final act of the court forbidding the ecclesiastical judges to proceed further would be nothing more than the definitive prohibition at the end of such a plea.

[20] It should be noted that no attempt is made here to maintain that writs in general, or writs of prohibition at earlier stages of their development, were always issued without any enquiry whatsoever into the facts of the case. On the contrary, it is more natural to suppose that some sort of examination was made in more primitive days when writs first originated. But, as their number and use and the mechanism connected with them developed, the examination would seem to have been dropped.

[21] *Rotuli Parliamentorum*, III (London, 1783), p. 26 (Parliament of 1377).

[22] Fitzherbert, in the fifteenth century, says that one suing for an *Indicavit* form of prohibition against a case of advowson should present the libel of the ecclesiastical court before receiving the writ (*The New Natura Brevium*, fol. 45C), but says nothing of such a procedure in regard to any others. Blackstone mentions a preliminary enquiry to be made, but he is not stating it for this early period (*Commentaries on the Laws of England*, 5th ed., London, 1773, III, 113).

[23] This is, in sum, the opinion of Maitland; see Pollock and Maitland, *Hist. of Engl. Law*, II, 560. The average price for an ordinary writ seems to have been half a mark or a mark (Pollock and Maitland, *op. cit.*, I, 195). Norma Adams notes that the price for a writ of prohibition was roughly the same as for other original writs (*Minnesota Law Review*, XX, 1936, p. 277, n. 20).

[24] *Cur. Reg. Rolls*, I, 223, 405; II, 44, 85; III, 42. An example in vol. IV, p. 195 speaks of *contra prohibitionem domini regis et justiciariorum*.

[25] *Cur. Reg. Rolls*, I, 164; II, 5. In 1187, Glanvill himself as chief justiciar prohibited a certain plea; but his formula was: 'Praecipio tibi ex parte domini regis . . . ut nullo modo procedas in causa . . .' (M. M. Bigelow, *Placita Anglo-Normannica*, London, 1879, p. 241).

two have to do with a *prohibitio justiciariorum*, one with a *prohibitio domini justiciarii* and one with a *prohibitio domini regis*. But beginning with the late years of John's reign, only the expression *contra prohibitionem domini regis* is to be found. More often than not, it is true, the formula is reduced to *contra etc.*, but wherever it is expanded there is no longer any mention of a *prohibitio justiciariorum*.[26] Judges, both at Westminster and in eyre, do give orders for the issue of writs of prohibition but always explicitly in the king's name only.[27]

Two separate writs should be drawn up in any case of prohibition, one addressed to the plaintiff or plaintiffs in court christian, the other to the ecclesiastical judges. When Bracton asks to whom a prohibition is to be made out, he answers his own question: 'sciendum quod tam ei qui tenet placitum quam ei qui sequitur.'[28] He goes on to observe that, in practice, a single writ would seem to suffice, since the plaintiff cannot very well obtain a decision without a judge, and likewise the judge can do nothing if the plaintiff desists. Nevertheless, he goes on, 'melius . . . erit quod omnibus fiat generaliter ne judices vel querens impune possent procedere.'[29] A somewhat involved situation may, however, arise: suppose that a judge-delegate has subdelegated his powers, to whom shall the prohibition be addressed? To solve the problem, certain preliminary distinctions must be made. If the subdelegation is so conditioned as to time or matter that the essential part of the judgment and the final sentence are reserved to the original delegate, it is to this latter that the prohibition is to be sent.[30] If, on the other hand, the latter has handed the affair over completely, then it is important to know whether he did so before or after the prohibition was first issued. If before, and in good faith, the prohibition will be presented to the subdelegate. If, however, he has empowered the other to act after the issue of a first prohibition, then he remains still responsible and will be the object of any eventual suit in the king's court, since it is presumed that he has tried to defraud the law.[31]

Just as the initiative in having an action in court christian prohibited has to be taken by the defendant in that court, so too is it incumbent upon him to deliver the writ of prohibition to the plaintiff and the ecclesiastical judges.[32] This is evident from the statement of Bracton when he describes the procedure in a plea of prohibition. The plaintiff in the king's court (he who, in court christian, was the defendant) must affirm: 'quod porrexit eis prohibitionem domini regis tali loco, tali die, in pleno consistorio tali.'[33] By Bracton's time these details of time and place have come to be registered faithfully by the scribe in the plea rolls of the *curia regis*. They may be found as early as the year 1232, and, although at that date they occur rarely, it is not long before they are recorded with regularity in nearly every entry relating to a plea of prohibition.[34] It would appear that the writ ought to be presented while the ecclesiastical court is sitting, since the records mention that it was in such and such a church that the king's prohibition was delivered to the judges and plaintiff.[35] The exceptions to this rule are extremely rare. One instance shows the judge being sought at his house;[36] another finds him presiding over the court, not in a church, but at the bishop's residence;[37] the bishop of St. David's receives a prohibition on one occasion while engaged in an ordination tour.[38]

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[26] The last use noted in the *Curia Regis Rolls* is for 1206. The Patent Rolls, however, mention a writ of the year 1216 where it is question of a *prohibitio justiciariorum* (*Rotuli Litterarum Patentium*, London, 1835, p. 123).

[27] In a letter to the sheriffs of Exeter and Berkshire (1281), we find the following: 'cum . . . tam per justiciarios nostros de banco quam per prefatos justiciarios nostros itinerantes in comitatu Lincolnie ex parte nostra . . . firmiter fuisset inhibitum . . .' (Prynne, *Records*, III, 268).

[28] *De Legibus*, IV, 261 (references to volume and page are given henceforth according to Woodbine's edition, cited above in n. 13).

[29] *Ibid.*, p. 263. The two separate writs will make assurance doubly sure, as Professor Hazeltine notes, 'The Early History of English Equity,' *Essays in Legal History*, ed. Paul Vinogradoff (Oxford, 1913), p. 278. In Glanvill's treatise *De Legibus et Consuetudinibus Regni Angliae* (ca. 1187), there is evidence of but one writ, that to the ecclesiastical judges (bk. XII, c. 21). Probably there was only one at first, but with the growing formalism of English legal practice, two writs would become necessary; otherwise, the party would escape pursuit in the king's court, even though the ecclesiastical judges were convicted, simply because he had not received a writ of prohibition in his own name.

[30] It is not always easy to fix the responsibility. Thus, in a case for 1239, we find the judges-delegate appearing as defendants in the king's court although the prohibition has been addressed to their subdelegates (KB 26/120 m. 14d). Perhaps this is a version of the case mentioned in connection with the next note.

[31] Bracton, *De Legibus*, IV, 262.

[32] Certain very interesting examples are to be had. One ecclesiastic delivers a prohibition to another (KB 121 m. 14d; an. 1241); or the prior of one religious house presents a royal prohibition to another prior and to the spiritual judges (KB 26/123 m. 20d; an. 1242). Should the plaintiff in the king's court be a woman, she it is who must see to the delivery of the writ (CP 40/7 m. 5; an. 1275). There were probably very natural reactions on the part of those who received the writ; one recipient is accused of throwing it insultingly to the ground, although he later denies this (*Bracton's Note Book*, III, 405, no. 1467).

The one who has sued the writ is not bound strictly to deliver it in his own person; he may send someone in his place.[39] Nevertheless, he must see to it that this latter is a responsible person; a servant of too low station cannot, it seems, be sent.[40]

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[33] Bracton, *De Legibus*, IV, 276. One need not conclude from certain writs given by Glanvill (bk. IV, c. 14 and bk. XII, c. 22), which allude to a prohibition made by the intermediary of the sheriff, that originally this officer presented the writ of prohibition. These particular writs, while they do contain an order to the sheriff to forbid the suit in court christian, are in reality judicial writs for the summoning of a person who has already continued his suit contrary to a prohibition previously issued by the king's court. They have, therefore, not to do with the first phase of an action which is being considered at this point. See what has been already said (*Med. St.*, VI, 273, n. 57). If the king prohibits a case in which he is personally interested, so that he becomes plaintiff, then the sheriff will deliver the writ; but this is in accord with what has been said, since the sheriff is acting as representative of the king who is plaintiff.

[34] I have found no example earlier than the Michaelmas term, 1232, stating the time or place of delivery. In the roll for that term is a case where the day is indicated (KB 26/111 m. 17). In the rolls for the following years, however, this mention occurs very rarely. The Easter roll for the year 1242 provides the first reference to the place where the writ was delivered (KB 26/123 m. 7). In 1243-1244, even the precise church is mentioned (*Placitorum Abbreviatio*, p. 121). But in both these last cases the day is lacking. The first example I have seen where day, place and church are all mentioned together is in an assize roll of 1247 (*Somersetshire Pleas*, I, 347, 338). Then in the rolls of the *curia regis* for 1249 (there is a complete lacuna in *curia regis* rolls between 1245 and 1249), information about the date and place of the delivery of a writ of prohibition is suddenly given with marked regularity. In 1250, out of 14 cases where the scribe has registered the plaintiff's story, these details are given 6 times. In 1260, they are found in 10 cases out of 11; in 1280, in 11 cases out of 11; in 1285, in 9 out of 10.

[35] '. . . cum in die Martii vigesima ante festum Sancti Gregorii anno trigesimo tertio (1249) in ecclesia Sancti Petri Bedfordensi, detulisset predicto magistro Galfredo prohibitionem domini regis ne predictum placitum teneret et similiter ne predicti Ricardus, Thomas et Lucia placitum illud secuti fuissent . . .' (KB 26/137 m. 12). 'in ecclesia de Basingstoke' (KB 26/143 m. 23d). 'in capella de Wuburna' (KB 26/160 m. 10d). 'in majori ecclesia Herefordensi' (KB 26/165 m. 4). 'in ecclesia Sancti Petri cathedrali Exoniensi' (CP 40/9 m. 10). 'in ecclesia Sancti Martini magni Londoniensi . . . in presentia magistri Walteri Curdet et Radulphi de Furshull' (CP 40/32 m. 18d; Hilary 1280). Beginning with the period 1275-1280, mention is made regularly, as in this last case, of the presence of certain persons, undoubtedly as potential witnesses; this mention is not found in earlier records.

[36] 'Ricardus queritur quod cum detulisset eidem magistro Rogero prohibitionem regiam ad domum ipsius Rogeri . . .' (KB 26/195 m. 3).

[37] '. . . in aula Dunmelensis episcopi' (KB 26/195 m. 23d).

[38] '. . . apud Kermardin ubi fecit ordines suos' (KB 26/159 m. 6).

[39] A certain party affirms in a case of the year 1280 that he delivered the writ on such a day 'per clericum suum Johannem' (CP 40/36 m. 122).

[40] In the Trinity term of 1220, the precentor and treasurer of Salisbury Cathedral defend their right to have tried a certain case and to have excommunicated the defendants, since these latter did not reply to the due citations. The defendants answer before the king's court that this is false; they did send, they maintain, their procurator bearing letters of procuration along with the royal writ of prohibtion, making known to the court christian a previous decision of the king's court which rendered null the ecclesiastical action. In reply to this, the precentor and treasurer are content to state 'quod quidam garcio tulit litteras domini

Having seen how a writ of prohibition is obtained, it would be well, before considering what happens to it in the ecclesiastical court, to determine briefly the exact import of this prohibition. Taken at its face value, the writ is a peremptory order to the court christian to suspend its action.[41] It regularly takes the form: 'Prohibemus vobis ne teneatis placitum in curia christianitatis inter . . . de laico feodo (de catallis) etc.;'[42] or, '. . . vobis prohibemus quod in causâ illa quae est coram vobis ut dicitur non procedatis, quia hoc esset manifeste contra coronam et dignitatem nostram;'[43] or again, '. . . vobis mandamus quod in cognitione praefatae causae contra praefatum A. de cetero non procedatis, donec a nobis aliud inde habueritis mandatum,'[44] Whether the prohibition be final or only interlocutory (*donec*), it offers the court christian no alternative; it commands that the action in progress be halted. Failure to obey this command will result at the very least in a considerable inconvenience for the other party and the judges in court christian. For, even though these latter may be perfectly well able to prove that the case, being of a spiritual nature, really belongs in the spiritual court, nevertheless, if they proceed after receiving the royal prohibition, they will be summarily attached, without previous summons, to appear in the king's court and show there why they have presumed to continue an action in spite of the prohibition. The writ of attachment instructs the sheriff to take such steps 'quod sint coram nobis vel justitiariis nostris . . . ostensuri quare tenuerunt placitum in curia christianitatis . . . contra prohibitionem nostram.'[45]

This formula which, it should be noted, does not blame the court christian for adopting the course it does, calls for a further observation on the import of the prohibition. The writ of prohibition itself makes no pronouncement whatsoever on the true nature of the original case in court christian, nor on the question of the competence of the court; it merely provokes a discussion of these matters.[46] As has already been remarked, the *curia regis*, at the moment of issuing the prohibition, has heard only one of the parties: it may quite well be that the unheard party rather than this one is in the right, hence the *ut dicitur* in the formula cited above. However, the prohibited party or judges are placed under the obligation of proving this *in the king's court*. The chief purpose of the writ of prohibition, in the thirteenth century at least, is not so much to prevent the spiritual court *hic et nunc* from taking cognizance of a particular case as to publicize and make prevail two important claims of the king: first, that he alone and his court have jurisdiction in the matters named in the various writs of prohibition, lay fee, advowson, lay chattels, etc.; secondly, that the royal authority alone has the right to determine what jurisdiction is competent in doubtful cases. Moreover, in practice, the harassing

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regis de prohibitione.' The case against them is dismissed, and one of the reasons given by the king's court is that 'judices (*precentor and treasurer*) dicunt quod nunquam fuerunt coram eos ad allegandum hoc quod factum fuit in curia domini regis.' No account seems to be taken of the part played by the groom who admittedly did deliver the writ of prohibition (*Bracton's Note Book*, III, 349, no. 1388).

[41] The prohibition must of course be really delivered; proof of the contrary easily exonerates a party accused of suing against a royal prohibition (KB 26/115B m. 14d; Mich. 1234): see also Prynne, *Records*, III, 229; an. 1279).

[42] Bracton, *De Legibus*, IV, 252.

[43] *Ibid.*, 255-256.

[44] *Ibid.*, 261.

[45] Bracton, *De Legibus*, IV, 272. The commentary on a case from the latter part of the thirteenth century states formally: 'Et s'il puis mustrer que les chateus qu'il demande seient de testament ou de matrimoine, il purra bien avoer la suite devant la prohibicion e apres' (British Museum, *Additional Ms.* 38821, fol. 58; this document is among those in our appendix p. 290). Cf. below p. 241.

[46] Blackstone, *Commentaries*, III, 114: 'Even in ordinary cases the writ of prohibition is not final and conclusive. For, though the ground be a proper one in point of law for granting a prohibition, yet if the fact that gave rise to it be afterwards falsified, the cause shall be remanded to the prior jurisdiction.'

effect of the writ of prohibition has a very real nuisance value on behalf of the king's court.

B. *The Reception Accorded the Writ in Court Christian*

When the judges and the plaintiff in the ecclesiastical court are confronted with a royal prohibition, what attitude will they adopt towards it? Bracton foresees three possible modes of acting: either the plea in court christian will be abandoned completely; or it will be merely suspended while the question of competence in the particular case is taken up with the justices of the king's court; or, finally, it will be continued in spite of, and contrary to, the prohibition.[47]

Concerning the first of these eventualities, information is meagre, because it leaves no trace in the records of the courts. If the ecclesiastical judges and the plaintiff defer to the prohibition, either because they are convinced that the case is in reality not of spiritual jurisdiction, or because they are unwilling to face a plea of prohibition in the royal court, or for any other reason, then nothing of the whole affair will find its way into the plea rolls, since there is no suit before the king or his justices in this matter except for failure to obey a writ of prohibition. As a result, it is impossible to say how often prohibitions met with this ready compliance on the part of the church courts. That some did, is evident from the fact that Bracton speaks in the first place of this possibility. Moreover, a text of the year 1279 emanating from Archbishop Pecham or some prominent ecclesiastical authority orders judges respectfully to obey the king's injunction whenever the case before them is in reality of royal jurisdiction.[48] And, frequently enough, court documents show us the case of a judge, who has been cited before the king's justices on the charge of having disobeyed a prohibition, proving categorically that, on the contrary, he deferred to it at once.[49] That cases in court christian were dropped on reception of a writ of prohibition, is therefore beyond doubt. The intriguing problem of the proportion of cases in which this was so admits of no decisive answer; something will be said later of probabilities in the matter.[50]

About the two other eventualities we are better informed. If the ecclesiastical judges have any doubts as to their competence in the case which is before them and which has been made the object of a prohibition, they may have recourse, says Bracton, to the royal justices. These latter, now in possession of the facts from both parties, will decide finally what court is competent: 'Si autem dubitaverint utrum supersedendum sit vel non, solent judices aliquando justitiarios consulere utrum procedere possent vel necesse haberent supersedere, et utrum ad eos pertineret cognitio vel non pertineret.'[51] The word *consulere* has given a name to the procedure here described, which is known as consultation (*consultatio*). Bracton's is the earliest known use of the term.[52] In his treatise, it signifies always the act of consulting the justices;[53] by the end of the thirteenth century, however, the word is used more generally in a slightly transferred sense, meaning the writ whereby a case that has been arrested in court christian by a writ of prohibition is returned there after the royal justices have been consulted and have found that it is truly of ecclesiastical jurisdiction. Such a writ is known in the registers of the fourteenth century as a writ of consultation, and the word 'consultation' alone comes normally to have this meaning rather than the original one of the act of consulting.[54]

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[47] *De Legibus*, IV, 262, 272.

[48] 'Inter prohibicionum regiarum genera merito credimus distinguendum: aut sunt mere licite, utpote quas de rebus et personis ad regium forum mere spectantibus ad judices ecclesiasticos emanare contigerit; in quo casu a judicibus easdem suscipiendum decernimus reverenter . . .' (published in *Mediaeval Studies*, VI, 1944, p. 310; cf. *ibid.*, p. 287).

[49] See below p. 258.

[50] See below pp. 246-247.

[51] *De Legibus*, IV, 262.

[52] Consultation is quite obviously later in origin than the writ of prohibition; the latter is found already in the treatise of Glanvill, the former not until that of Bracton. And this is logical, since consultation is but a remedy for certain abuses of the writ of prohibition. It was, nevertheless, in use before the treatise of Bracton was written, since he himself bears witness to the fact that one of the three forms of the writ which he reproduces was the invention of Martin Patishall, a royal justice who was active in the 1220's: 'Est et alius modus consultationis et responsionis per Martinum de Pateshilla quod prohibitio locum non habet inter ecclesiasticas personas . . .' (*De Legibus*, IV, 263). Whether Martin Patishall was the one who first imagined the system of consultation as the

The actual procedure in seeking a writ of consultation has certainly not reached its definitive form in the time of Bracton. According to his account, it would appear that consultation takes place by way of a letter, wherein the ecclesiastical judges state the true nature of the case which has been halted by a royal prohibition.[55] In all three forms of the writ of consultation contained in Bracton's treatise, there is a distinct lack of finality; the action in court christian is to continue, *if* the case is actually as the judges of this court have represented it in their letter.[56] No effort seems to be made to verify whether this is the true state of affairs or not, and unfortunately a same concrete case could be viewed quite differently by the two jurisdictions. In fact it is just this point that gives rise to much of the strife between the two in the thirteenth century, as was seen in the previous article.[57] The procedure evolves, however, and when we see it in practice around 1285 it has a much more definitive air. Perhaps the custom of consulting by letter still remains, but more commonly the texts speak of actually going before the king's justices in order to consult them. Moreover, to prove that the case which has been prohibited is really of a spiritual nature, the canonical *libellus*, wherein the action instituted by the plaintiff in court christian is detailed, is to be presented.[58] It is then compared with the complaint (*suggestio*), made by the party who has sued out the writ of prohibition, and, if this comparison convinces the justices that the true state of things was falsified in obtaining the prohibition, they will thereupon give or send to the ecclesiastical judges a writ (of consultation) authorizing them to continue the action in court christian, notwithstanding the previous writ of prohibition.[59] The writ of consultation, issued now in the king's name now

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logical remedy against unjustifiable prohibitions or not, is impossible to say; but it is not surprising that the name of a member of the famous 'Simon-Martin-William-Henry dynasty' (Simon and Martin Patishall, William Raleigh and Henry Bracton) should be associated with the earliest known allusion to consultation. In view of Martin Patishall's date it is at first sight extraordinary that no register of writs before the fourteenth century seems to contain a form of the writ of consultation (see below n. 59; this may, however, be due to the fact that registers are usually of original writs (those which originate an action in the royal courts) or of judicial writs (those issued in the course of, and to further, proceedings in the royal courts), whereas consultation actually fits into neither category, being merely a guarantee of non-interference by the king in another court altogether.

[53] See, for example, *De Legibus*, IV, 262: '. . . fuit eorum consultationibus per judices multis modis responsum;' and many times on p. 263.

[54] Cf. Cowell, *A Law Dictionary* (London, 1701), at the word *Consultation*; Blackstone, *Commentaries*, III, 114; Miss I. J. Churchill, *Canterbury Administration* (London, 1933), I, 531.

[55] *De Legibus*, IV, 262-264.

[56] The shortest of the three forms given by Bracton illustrates this: 'Talibus judicibus salutem. Inspectis litteris vestris quas nobis transmisistis et plenius intellectis, sine prejudicio melioris sententiae, consultationi vestrae duximus respondendum, quod si res ita se habet sicut in consultatione vestra nobis exposuistis, videtur nobis quod in causa illa bene potestis procedere non obstante regia prohibitione' (*De Legibus*, IV, 263).

[57] *Mediaeval Studies*, VI (1944) 291-292, 297, 301.

[58] The king replies as follows to a series of articles presented by the bishops in 1285: 'Illi qui timent procedere in causis propter regis prohibitionem adeant . . . et consulant eos in casibus suis, et ostendant libellum vel petitionem . . .' (Wilkins, *Concilia*, II, 115).

[59] The *Statutum de Consultatone* of the year 1290 is the official recognition of the practice of consultation; it is interesting also for the reasons given for sanctioning the practice and may well be quoted here: 'Cum judices ecclesiastici ad procedendum in causis coram ipsis agitatis per prohi-

in that of his justices,[60] is addressed in all the thirteenth century examples met with to the judges alone in court christian. Nowhere is there any explicit reference to the other party obtaining a writ of consultation. Still, he may have played a certain role; the *Statutum de Consultatione*, while mentioning the writ to the judges only, does say nevertheless that the royal justices examine the canonical libel *ad instanciam querentis*.[61] Perhaps he could move for the writ, even if it was addressed solely to the judges. At a later period a writ of consultation issues to the party as well.[62]

Ecclesiastical authorities must have looked with considerable disfavour on the practice of consulting, since it really amounted to a *de facto* recognition of the lay courts' right to determine the question of doubtful competence, whereas the Church, as the spiritual and therefore higher authority, had always regarded this right as peculiarly her own. Bishop Grosseteste is not slow to condemn what he terms the 'sinful' pretentions of secular judges who usurp to themselves this particular right,[63] but he does not speak expressly of consultation and it is not sure that he has it in mind. What the hierarchy is usually fulminating against is the practice of haling ecclesiastical judges into court for failure to obey a prohibition.[64] The Church's leaders may not have liked consultation, but at the same time it must often have been the only way of avoiding either a complete abandonment of the ecclesiastical action or else a suit in the king's court for failure to obey a prohibition. There is evidence of consultation being used. Bracton himself states that spiritual judges sometimes follow this custom,[65] and the *Note Book* furnishes at least one example.[66] By the reign of Edward I, the clergy seem to have accepted consultation as an established institution and to have availed themselves of it; one of the petitions of the bishops in 1285 is that one royal justice be always present at London where he may be readily consulted in regard to doubtful cases and may be able

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bitionem domini regis sepius supersedeant in casibus ubi remedium conquerentibus ad curiam domini regis per breve de cancellaria sua fieri non possit, propter quod querentes illi in utraque curia tam regia quam ecclesiastica jure suo et remedio sunt elongati ad grave dampnum ipsorum, prout dominus rex ex gravi querela quorundam intellexit, dominus rex vult et precipit quod, cum judices ecclesiastici per prohibitionem regiam sibi porrectam supersedeant in casibus predictis, quod cancellarius vel capitalis justiciarius ipsius ad instanciam querentis, si viderint quod per breve de cancellaria querenti remedium in suo casu fieri non possit, set quod ad curiam ecclesiasticam pertineat causam illam determinare, scribat judicibus coram quibus causa illa prius fuerit agitata quod in causa illa procedant, non obstante prohibitione regia prius inde sibi [porrecta etc.]' '(*Statutes of the Realm*, Record ed., London, 1810, I, 108). A contemporary writ of consultation (1286) has been preserved in *The Register of William Wickwane* ed. William Brown (Surtees Society Publications, No. 114, Durham, 1907), p. 43, n. 144; but I have seen none in a register of writs before 1318 or thereabouts (Bodleian Library, *Rawlinson Ms.* C. 292, fol. 25v-26).

[60] Bracton, *De Legibus*, IV, 263; cf. 262.

[61] *Loc. cit.* The form given in the first register (n. 59 above) states it was at the instance of the party that the consultation was sought.

[62] Fitzherbert, *The New Natura Brevium* (9th ed., London, 1794), fol. 52.

[63] 'Iterum supradicti judices forenses peccatum peccato adicientes et fines ecclesiae invadentes, usurpant sibi judicialiter determinare de pluribus causis et controversiis utrum illae pertineant ad forum ecclesiasticum vel forum laicale, cum hoc nequaquam sit illorum sed potius judicum ecclesiasticorum, quia quid sit ecclesiasticum vel quid non, non potest determinare judex secularis, cum ejus potestas judiciaria non extendat in ecclesiastica; potestas vero judiciaria judicis ecclesiastici extendit se etiam in secularia, cum, ut supra dictum est, omne judicium per auctoritatem et per doctrinam sit ecclesiae, licet non omne per ministerium' (*Epistolae Roberti Grosseteste*, Rolls Series, London, 1861, p. 220, n. LXXII*; an. 1236). Similarly among the protests and petitions of the English clergy in 1237 is the following: 'quod per solos judices saeculares non determinetur de aliqua causa utrum debeat dici ecclesiastica vel saecularis' (Burton Annals in *Annales Monastici*, Rolls Series, London, 1864, I, 254).

[64] The complaint of the Council of London, 1257, is typical (Burton Annals, *loc. cit.*, I, 406).

[65] *De Legibus*, IV, 262.

[66] The defendant in the king's court in a prohibition plea of 1232 is exonerated 'quia alias super hoc consulti fuerunt justiciarii super ista prohibicione et responsum fuit quod procedere potuit loquela in curia christianitatis' (II, 679, n. 877).

immediately to give permission to continue the suit in court christian if it proves to be of ecclesiastical jurisdiction.[67] Fourteenth century registers of writs bear witness to the wider use of consultation by the ever increasing number of forms of the writ which become more specific to cover the different cases that arise.[68] On the ecclesiastical side, episcopal registers cite frequent examples of pleas, which have been halted by a prohibition, being returned to the church court by writ of consultation.[69]

If the ecclesiastical court neither abandons the action being conducted there nor suspends it while the king's justices are consulted, its attitude will necessarily be the third one foreseen by Bracton, namely that of continuing the action contrary to the express prohibition of the king. Convinced that the case is truly spiritual, the judge or judges do not consider themselves obliged to surcease.[70] Indeed, if they are so convinced, they are even ordered by the English hierarchy not to abandon the hearing of pleas where they alone are competent notwithstanding a royal prohibition.[71] Bracton does not condemn ecclesiastical judges who continue to hear a plea, believing it to be of their jurisdiction; quite objectively he says: 'Cum autem ad prohibitionem judices supersedere noluerint nec ille qui sequitur a prosecutione desistere, tunc attachientur omnes quod sint coram rege vel justitiariis suis de banco vel itinerantibus per tale breve ad respondendum quare [tenuerunt placitum in curia christianitatis contra prohibitionem].'[72] The writ of attachment in this case[73] does not exclude the possibility of the person or persons attached having been right in the original case; it does not even say that they did a wrong thing in continuing the ecclesiastical action after the writ of prohibition; it merely states that they must come before the king or his justices to show why they have done so (*ostensuri quare*).[74] If they succeed in proving that the original plea was truly spiritual, not only will they be allowed to go on with it, but they will suffer no penalty for having continued after the prohibition; apparently it is deemed that they were quite justified in doing so, if the case was really of ecclesiastical jurisdiction. Such is the conclusion that one would draw from certain passages of Bracton and *Fleta* as well as from actual judgments rendered in the king's court and recorded in the plea rolls.

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[67] 'Inprimis ut assignetur unus vel duo sub alternatione justitiarii, vel baro de scaccario, vel alius fide dignus, qui semper sit praesens Londini qui habeat potestatem, quotiescunque prohibitio impetitur et judici ecclesiastico porrigitur, in casibus illicitis vel dubiis discutiendi an debeat supersederi propter prohibitionem hujusmodi vel non, et qui, non obstante prohibitione, dare possit licentiam in causa procedendi' (Wilkins, *Concilia*, II, 115).

[68] The register mentioned in n. 59 contains but two forms of consultation; within twenty years registers contain as many as 16 and 24 varieties (Bodleian, *Western Ms.* C. 667, fol. 35v-40; *Western Ms.* s.c. 3712, fol. 39-45v).

[69] Miss Churchill describes a number of typical cases from registers at Lambeth Palace in her *Canterbury Administration*, I, 531-534. I hope to study the history of the writ of consultation more fully at a later date.

[70] For the moment we ignore the other possibility, i.e. that they know the case before them to be truly temporal, but continue it deliberately in spite of the prohibition, hoping perhaps that they may win the prohibition plea on some technicality.

[71] Council of Merton 1258 (Burton Annals, in *Ann. Mon.*, I, 418); Lambeth 1261 (Wilkins, *Concilia*, I, 751). Cf. Grosseteste, *Epistolae*, no. *LXXII** (p. 324) and no. XCVIII (pp. 300-302); also the document attributed to Pecham and published in appendix to the article in *Mediaeval Studies*, VI (1944) 310-311. The English prelates are here but following the general rule laid down by the Church; in 1147 Pope Eugene III had ordered that 'episcopi, abbates, archiepiscopi et alii ecclesiarum praelati de negotiis ecclesiasticis . . . laicorum judicio non disponant, nec propter eorum prohibitionem ecclesiasticam dimittant justitiam exercere' (*Corpus Juris Canonici*, Decretals of Gregory IX, c. 2, *de judiciis*, li. II, tit. 2). Elsewhere the English clergy go on to say that the king has no right to take umbrage at ecclesiastical judges who but do their duty in continuing to hear spiritual pleas even contrary to a prohibition; Council of London 1257 (M. Paris, *Chronica Majora*, Rolls Series, London, 1873, VI, 360) and Protestations of the Clergy 1237 (Burton Annals in *Ann. Mon.*, I, 255).

[72] *De Legibus*, IV, 272.

[73] *Ibid.* The form of a writ of attachment is given below p. 248.

[74] Cf. above p. 237. The writ of prohibition and the writ of attachment on prohibition taken together may be likened to the two parts of the writ *Praecipe quod reddat*, which G. B. Adams takes as the type of a whole class of writs; according to the *Praecipe*, the sheriff is to order the restoration of property and, *if this is not done*, to have the delinquent summoned into court (G. B. Adams, *Origins of the English Constitution*, New Haven, 1912, p. 81).

Thus Bracton, in considering the case of a person who has to answer in the king's court for failure to obey a prohibition, says that if he can prove the original action to have been purely spiritual he will be absolved of blame, nothing having been done against the king's dignity.[75] When *Fleta* speaks of the dilemma of ecclesiastical judges who have received a writ of prohibition and who are not altogether sure of the spiritual nature of the plea before them, he nowhere states that they are *obliged* to surcease, but is content merely to caution them that it is the safe thing (*tutum est*) to consult the royal justices.[76]

Practical examples from the plea rolls are likewise instructive. In 1220, two judges offer as their excuse for having continued to hear a plea, after receiving a writ of prohibition, the fact that they had been informed by the papal legate to proceed in spite of the prohibition, since the plea was not one of advowson as had been alleged; when this is proven to be true, no steps are taken against them for having ignored the prohibition.[77] In the Trinity term of 1239, a certain Isabella has to answer for suing a plea of chattels in court christian against a prohibition. Her reply is to the effect that neither before nor after the prohibition was it a question of lay chattels, but of chattels connected with testament; proof of this is furnished from the record of the ecclesiastical court, whereupon she is dismissed and the party who sued the writ of prohibition is amerced, although it is quite evident that Isabella did continue her plea in court christian after receiving the writ of prohibition.[78]

It seems clear therefore that, if the court christian continues an action after receiving a royal prohibition, the judges or the plaintiff or both will, on the complaint of the other party, be attached to appear before the king's justices, not to answer for attaint to the royal authority by not obeying the prohibition, but simply to explain why they dispensed themselves from obeying. If the reasons they allege are well founded, it is deemed that there was no attaint to the king's dignity, since they were but doing what they had a right to do. If, on the other hand, their reasons are insufficient, then of course they will suffer for their rashness; hence the constant recommendation of the secular authority to have recourse to consultation in order to avoid this latter eventuality.

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[75] 'Respondere itaque poterunt multis modis, vel quod locum habere non potuit prohibitio quia res de qua actum est mere spiritualis vel spiritualitati annexa, et hoc docere poterunt per editionem factam, ut si causa fuerit testamentaria vel matrimonialis, et quo casu in nullo praesumptum est contra regiam dignitatem, et sic absolvi poterunt ab observatione judicii' (*De Legibus*, IV, 275). Cf. IV, 267: 'Unde videtur quod si principalis debitor solvendo non esset, quod persona agere posset in foro ecclesiastico contra fidejussores, non obstante prohibitione;' and further along in regard to another case: 'Et quod hujusmodi pecunia peti possit non obstante prohibitione, inveniri poterit de termino Sancti Michaelis anno regis Henrici quarto decimo . . .'

[76] 'Et si terra vel aliud in foro petatur ecclesiastico, et regia prohibitio intervenerit ne procedatur ibidem, et judex procedere timuerit an res de qua agitur mere spiritualis sit necne, tutum est judici supersedere litemque suspendere donec discussum fuerit a justiciariis locum regis tenentibus utrum licite procedere valeat in causa necne' (*Fleta*, ed. 1685, p. 430).

[77] *Bracton's Note Book*, III, 349, nº 1388.

[78] '. . . nunquam post prohibitionem vel ante . . . de aliquibus catallis que non sunt de testamento vel matrimonio . . . , immo de catallis que sunt de testamento predicti Willelmi quondam viri sui. Et hoc idem continetur in editione quam idem abbas inde profert' (KB 26/120 m. 23). Similar cases are of frequent occurrence: KB 26/74 m. 9d, 17d (1220); *Bracton's Note Book*, II, 576 (1233); KB 26/119 m. 6d (1238); CP 40/58 m. 26, CP 40/60 m. 50d (1285); *Assise Roll* 573, m. 106 (1286); see also record of plea published in our appendix (no. VII) where the defendant avows formally that he sued his plea in court christian after the prohibition, yet this does not result in any steps being taken against him.

The Trinity roll for the year 1231 offers a curious case. The defendant in the prohibition plea avows that the writ of prohibition had been received in court christian but that he immediately protested to the ecclesiastical judges that, if the sentence to be rendered had to do with chattels other than testamentary or matrimonial, such a sentence should be null. The *acta* of the court christian, produced by both parties, show that this condition had indeed been posited; as a result, the defendant is dismissed *sine die*, even though the ecclesiastical action had admittedly continued after the prohibition (KB 26/109 m. 18d; see appendix no. III).

C. *Steps Taken in Court Christian When a Prohibition Is Not Obeyed*

Although the canonical procedure of courts christian lies outside the scope of this article, nevertheless, before turning definitely to follow a plea of prohibition through the king's court, we should see briefly how the ecclesiastical action is carried on and especially what happens to the defendant who has withdrawn from the court and sued the writ of prohibition.

The action pursues its normal course according to the rules of canonical procedure. The defendant, it is true, is lacking, but such a situation is provided for. Unlike the English Common Law of the thirteenth century which does not permit of a sentence being pronounced in a personal action against an absent defendant[79]—hence the interminable series of attachments and distraints[80]—Canon Law shows itself more realistic in authorizing a judgment against a defendant who refuses obdurately to answer a summons.[81] The latter is first to be cited three times to appear; if this triple *monitio* fails, he will be excommunicated, even major excommunication being pronounced against him, as the *suspensus ab ecclesia* of the records indicates. This spiritual arm is the only one that the ecclesiastical court itself disposes of against contumacious litigants; very frequent use is made of it, especially from the middle of the thirteenth century on.[82] Meanwhile, the absence of one of the parties does not prevent the judges from continuing to hear the witnesses or even from rendering judgment in the case before them. The minutes of the king's court dealing with pleas of prohibition are, in fact, full of examples where complaints are made of the damage suffered in court christian as the result of a plea sued there after a writ of prohibition and in the absence of the defendant.[83]

The spiritual authorities may go yet farther. Not content with excommunicating and pronouncing sentence against the defendant, they may sometimes institute a new suit against him and cite him to answer for the canonical offence of having caused an ecclesiastical action to be unjustly prohibited by the secular power. When such a step as this is taken, the new suit in court christian is usually the object of a new prohibition on the part of the king.[84]

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[79] Pollock and Maitland, *Hist. of Engl. Law*, II, 594.

[80] See below pp. 250-251.

[81] *Corpus Juris Canonici*, Decretals of Gregory IX, *de dolo et contumacia*, li. II, tit. 14. See also the treatise of the English canonist William of Drogheda on ecclesiastical procedure (ca. 1240), *Summa Aurea*, ed. L. Wahrmund (Quellen zur Geschichte des Römisch-Kanonischen Processes im Mittelalter, Band 2, Heft 2, Innsbruck, 1914), pp. 34-35.

[82] This means of forcing a litigant to appear is of course of ancient date, but the use made of it earlier was sparing. The earliest rolls of the king's court provide us with examples of its use (*Curia Regis Rolls*, III, 147; an. 1204); yet it is remarkable that between the years 1200 and 1212 only two of the prohibition pleas recorded in the plea rolls bear witness to excommunication for contumacy in court christian; in 1220, but 3 out of 27; in 1230, 2 out of 26. In 1250 however, 8 out of the 17 ecclesiastical suits mentioned have resulted in the excommunication of the defendant; in 1260, 9 out of 14; in 1280, 7 out of 11; and in 1285, 5 out of 10. The rolls of the intervening years confirm the conclusion that there is in the middle and latter part of the thirteenth century a marked tendency to multiply the number of excommunications for contumacy.

[83] '. . . et per hoc quod ipse secutus fuit placitum illud contra prohibitionem, deterioratus est et dampnum habet ad valenciam XL solidorum' (*Bracton's Note Book*, III, 402, n° 1464; an. 1220). 'Et queritur quod idem prior, spreta prohibitione, tenuit placitum; unde dicit quod deterioratus est et dampnum habet ad valenciam XL solidorum etc.' (KB 26/141 m. 27; an. 1250).

To come back to the question of the excommunication, certain uses of it in connection with prohibitions are somewhat involved and must, therefore, be treated at greater length. Since the time of William the Conqueror, the secular power was accustomed to come to the aid of the ecclesiastical authority against obstinate excommunicates.[85] By the twelfth century the precise role played by the secular power is clearer: if, after a delay of forty days, the excommunicate does not seek absolution, the bishop informs the king of this fact; whereupon, the latter gives orders to his sheriff to arrest the obdurate sinner and keep him in custody until he submits and is willing to be reconciled.[86] Ironically enough, ecclesiastics are found to take advantage of this help from the secular arm even against those whose excommunication has resulted from suing a writ of prohibition against an action in a church court. Certain judges seem to have used subterfuge in order to be able to avail themselves of this help. Bracton records, for instance, the ruse of those who, shortening the normal canonical procedure, pronounce in the same day the three preliminary warnings and excommunicate the unfortunate defendant at once. Then in order that they may rid themselves of this latter and escape at the same time a suit in the king's court for what they have done after receiving the prohibition, they inform the secular authorities through the bishop that an excommunicate refuses to be reconciled with the Church; as a result, the king, ignorant of the exact state of affairs, orders the arrest of the excommunicate.[87] We may well surmise that he will quickly countermand this order if he learns the further details.[88] A still more daring evasion is that of the judge who, cited before the king's court in a prohibition plea, has himself essoined and takes advantage of the delay thus obtained to have the party who sued the writ against him excommunicated and imprisoned.[89]

Where a prohibition enters in, excommunication may be pronounced for other reasons than contumacy. The mere fact of trying to hinder an ecclesiastical court by means of a royal injunction is, in theory, ground enough. The English Church councils of the thirteenth century fulminate against such persons as attempt by writs of prohibition to prevent courts christian from taking cognizance of cases pertaining to them, especially since these writs are generally obtained, they add, by misrepresenting the true nature of the case, describing as lay fee what is in reality frankalmoin or as lay chattels what really has to do with testament, etc.[90] In the eyes of the Church, there must have been misrepresentation in most cases.[91] Even where two opinions are possible on the nature of the case, it would be but natural for the ecclesiastical authorities to regard their own opinion as the correct one and so to consider that any prohibition against the case had been obtained by misrepresenting it. The person or persons who sue the writ are not the only ones to incur excommunication; all those who knowingly cooperate in any capacity whatsoever in the preparation of the writ come under the same spiritual penalties.[92]

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[84] In the middle of the fourteenth century registers of writs begin to include a form of prohibition to cover the circumstances of this specific case: Bodl. Libr., *Rawlinson Ms.* C. 454, fol. 329 and C. 897, fol. 42. Fitzherbert mentions it in *The New Natura Brevium*, fol. 41H. The case described in the plea published on p. 289 (XI) is at least similar.

[85] 'Si vero aliquis per superbiam elatus ad justitiam episcopalem venire contempserit vel noluerit, vocetur semel et secundo et tertio; quod si nec sic ad emendationem venerit excommunicetur, et si opus fuerit ad hoc vindicandum, fortitudo et justitia regis vel vicecomitis adhibeatur' (Ordinance of William the Conqueror on the competence of ecclesiastical courts); F. Liebermann, *Die Gesetze der Angelsachsen* (2nd ed., Halle, 1903), I, 485, and also in Stubbs, *Select Charters* (9th ed., London, 1921), p. 100.

[86] Pollock and Maitland, *Hist. of Engl. Law*, I, 478; the form of the bishop's letter to the king occurs in Bracton's *De Legibus*, IV, 270, and the royal writ *De capiendo excommunicati*, IV, 327. A letter preserved by Prynne (*Records*, III, 67; an. 1225) gives us the ecclesiastical judges' lively and complete account of the successive steps taken by ecclesiastical and secular authorities in the punishment of an obdurate *contumax* and excommunicate.

[87] Bracton, *De Legibus*, IV, 270. Concrete examples of the same may be found in the *Close Rolls for the Reign of Henry III (1237-1242)*, pp. 428-429; *Close Rolls (1247-1251)*, p. 105; also KB 26/160 m. 43d (1258); KB 26/171 m. 41 (1261); KB 26/210 m. 23 (1265), and the plea published on p. 288 (IX).

[88] Bracton, *loc. cit.*; cf. *Close Rolls* as indicated.

[89] 'Willelmus conqueritur quod cum . . . detulisset predicto magistro Galfredo prohibitionem domini regis ne predictus [Galfredus] placitum teneret et similiter ne predicti Ricardus, Thomas et Lucia placitum illud secuti fuissent, idem Galfredus, spreta predicta prohibitione, nichilominus tenuit predictum placitum ita quod idem Galfredus et alii in deceptionem curie domini regis fecerunt se essoniari, ita quod interim fecerunt ipsum Willelmum excommuncari et ad mandatum domini episcopi Lincolniensis capi et imprisonari in prisona Bedfordie quousque deliberatus fuit per preceptum domini regis' (KB 26/137 m. 12; an. 1250).

The king is in a position, however, if not to limit the excommunications themselves, at least to lessen their effect. First of all, in regard to the assistance he lends in order to force an excommunicate to submit, he places as a prerequisite condition that the reason for the excommunication be adequate in his eyes.[93] Moreover, if the offender gives proof sufficient of his desire to be reconciled and the bishop still refuses to absolve him, the king withdraws his support and even orders the sheriff to set the prisoner free in spite of the bishop.[94] If the prelates complain of a too arbitrary conduct of the king on this point, he is quite capable of reminding them that they have no strict right to the support given them by the secular arm against excommunicates; the sovereign may grant or withhold this as he sees fit.[95] Indeed, there are in this regard certain well known exceptions: the king refuses, for instance, to recognize as valid any sentence of excommunication against his sheriffs, bailiffs or other officers, unless he himself has been consulted beforehand.[96] As for excommunications pronounced against a person, who sues a writ of prohibition, to prevent him from going on with his plea in the royal court, the king regards them as fraudulent and of no value.[97] Not only does he annul his command *de capiendo*

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[90] In the year 1237, the clergy protests against the custom of obliging ecclesiastical judges to explain in the secular courts *quare talem excommunicari* (Burton Annals, *Ann. Mon.*, I, 255). It is probable that the excommunications referred to are connected with prohibitions. The councils of the period 1257-1261 are quite explicit in pronouncing excommunication against all who evade a spiritual plea by means of a writ of prohibition (*art. cit.*, *Mediaeval Studies*, VI, 1944, pp. 297-298). In the councils of Reading (1279) and Lambeth (1281), Archbishop Pecham renews the sentence of excommunication against all who make use of letters from a lay jurisdiction to prevent courts christian from hearing ecclesiastical cases (*art. cit.*, p. 303).

[91] Among the protests of the clergy in 1285 against usurpations by the royal courts is the following pessimistic observation: 'Cum . . . omnes impetrantes prohibitionem regiam in casu illicito sint eadem sententia involuti, et *passim hodie in quacumque causa fere prohibitiones vel literarum vel verborum a malignantibus impetrantur*, probabiliter timetur quod pro his et aliis causis sunt plures excommunicati hodie in Anglia quam in alia terra mundi' (Wilkins, *Concilia*, II, 118).

[92] These proceedings have been described at some length in the previous article, *Med. Studies*, VI, 287, 297-298. Even the king himself is not excluded in the penalties envisaged by ecclesiastical authorities; indeed in a case preserved for us by Prynne (*Records*, III, 195-199; an. 1277) the judge pronounces the excommunication against 'omnes illos breve illud differentes et consilium, auxilium, favorem eidem prestantes . . . non excipiendo personam regis.'

[93] *Close Rolls, 1227-1231*, p. 553; also *1231-1234*, pp. 303-304; *1237-1242*, p. 218.

[94] *Close Rolls, 1259-1261*, p. 203; Bracton, *De Legibus*, IV, 271-272.

[95] *Articuli Cleri et Responsiones*, published by H. Cole, *Documents Illustrative of English History in the Thirteenth and Fourteenth Centuries* (London, 1844), p. 355, art. X.

[96] A letter addressed to the king in 1225 reminds him of the 'privilegium quod habetis, ut dicunt, quod capitales bayllivi vestri non sunt excommunicandi, vobis inconsultis' (Prynne, *Records*, III, 64-66); cf. *Close Rolls, 1234-1237*, pp. 378-379.

[97] The annotator in *Bracton's Note Book* observes: 'Refert utrum ille qui implacitatur eum excommunicaverit vel hoc procuraverit an alius' (II, 428, n. 552). In the *De Legibus*, Bracton states that one of the common ways for the plaintiff to defend himself, if his adversary has brought in the exception of excommunication against him, is to show that the excommunication was pronounced because he had served a writ of prohibition on the court christian (IV, 326-327). Fitz-

excommunicati, but he even orders the victim to be absolved; or, if this be not done, he acts just as though there were no excommunication.[98]

The sovereign's refusal to recognize the validity of such excommunications and his withdrawal of the support of the secular arm contribute greatly to blunt the edge of the Church's spiritual weapon, the only one she possesses for obliging litigants to continue a plea in court christian despite a prohibition. As a result, in cases where he prohibits and the Church would override his prohibition, the advantage generally rests with the king. Little wonder that the clergy frequently laments that writs of prohibition are not only limiting the jurisdiction of spiritual courts, but also lessening their effectiveness. If they surcease completely or consult royal justices, they are conceding to the secular power the right to determine doubtful jurisdiction and, in many cases, letting pleas slip out of the church courts. If, on the other hand, they continue in spite of the prohibition, the king has means of rendering largely ineffectual the further steps of the action, while the ensuing prohibition plea in his own court will put the ecclesiastical authorities to the very considerable trouble of showing why they have proceeded thus, even though they may have been perfectly justified in doing so. It is the steps of this prohibition plea that will form the subject of the second part of the article.

II.

The prohibition plea represents the second phase of the working of the writ of prohibition. Obviously, it follows only when the writ has been received and disobeyed. A preliminary question of considerable interest occurs at once. In what proportion of cases did courts christian contravene or ignore prohibitions? The question is an interesting one, for the answer to it would throw some light on the degree to which the Church contested or yielded ground along the border-line between secular and ecclesiastical jurisdictions. It was seen in a previous article that the disputes between these two turned less around questions of principle than around interpretation of fact;[1] thus the Church might view litigation over a certain piece of real property as having to do with frankalmoin, while the royal court might see it as lay fee. Ecclesiastical authorities repeatedly ordered their subjects, courts christian in particular, not to relinquish pleas which they deemed to be spiritual and therefore to continue even in spite of a prohibition.[2] Was this merely a theoretical position adopted by them, or was the policy of ignoring prohibitions actually carried out in regular practice? This is the question that a study of actual cases might be expected to answer. Unfortunately, however, it is impossible to give a categorical reply. The reason is simple: if the case is dropped in court christian, no trace of it will be found in the plea rolls, and these are almost a unique source

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herbert will maintain that no one can be excommunicated for having sued a writ of prohibition, even though the original case in court christian be truly spiritual: 'It is not material whether the prohibition were sued legally or erroneously, because he shall not be punished for suing a prohibition in the king's court' (*The New Natura Brevium*, 9th ed., London, 1794, fol. 41H).

[98] Pollock and Maitland, *Hist. of Engl. Law*, I, 478-479. The examples of a direct order to the ordinary to absolve are not numerous. The *Note Book* offers one (II, 516, n. 670), but it does not sound peremptory: 'dictum est episcopo quod absolvat,' writes the scribe, and not 'preceptum est.' Again in 1242: 'Dictum est prioribus quod absolvant eos si sint excommunicati' (KB 26/123 m. 26). More frequently the other party in the plea is ordered to have his adversary absolved, which is of course a quite different thing; cf. KB 26/92 m. 13 (1225), KB 26/111 m. 20d (1232), KB 26/160 m. 10d (1258). If this order of the king is not obeyed, the party will find himself the object of a new suit before the king's justices (KB 26/160 m. 10d, KB 26/169 m. 71d; an. 1260).

[1] *Mediaeval Studies*, VI (1944) 291-292, 297, 301; cf. below p. 259.

[2] See above p. 241, n. 71.

for practice in the matter of prohibition.[3] In the plea rolls we see only the cases where the prohibition has been disobeyed, allegedly at least. Are these a majority of the actions that have been prohibited, or a minority? We cannot say. We can only note that they are indeed frequent and that, when they are considered in conjunction with the strong pronouncements and recommendations of ecclesiastical officials, we are left with a clear impression that the Church did not cede easily to the pressure exerted by means of prohibitions but contested the ground stoutly.[4]

The steps of procedure have been traced as far as the delivery of the writ of prohibition. If, confronted with the writ, the court christian fails to suspend its action, the machinery of a prohibition plea is set in motion against the plaintiff and the judges. Once again, it is the defendant who takes the initiative, not the king or his officials. He must come before the justices and report what has taken place. His intervention at this point is indispensable, since there must be a plaintiff to sue the plea in the royal court. It is not the king who sues this plea against those who have disobeyed a prohibition, but the party who obtained the writ.[5] This is evident from certain cases where for one reason or another the plaintiff in the king's court does not appear on the day appointed, or within the four days that he is allowed; his adversary is immediately dismissed without the king taking any action whatsoever against him. Indeed the very writ of attachment indicates as much, for the order to the sheriff to have the other party brought into court begins with the condition: 'si A. fecerit te securum de clamore suo prosequendo.'[6]

As a result of the complaint made to the effect that an action has been continued in court christian in spite of a prohibition, a writ of attachment is issued to the sheriff ordering him to bring the offenders before the king's court. It should be noted that, just as the writ of prohibition was granted on the mere word of the defendant, so too the writ of attachment is issued on the same party's bare assertion that the prohibition was not deferred to. This raises a problem, for it is impossible to read those minutes of the plea rolls relative to prohibitions without surmising that writs of attachment, like those of prohibition, were often obtained by misrepresenting what actually happened in court christian. In a surprisingly large number of the cases where someone has been charged with suing a plea in a church court after a prohibition, not only is the charge denied, but the contrary is clearly proven. While it is quite possible that the denial of the charge is purely a matter of form—and the thirteenth century was well acquainted with these juridical formulae devoid of literal truth[7]—it is generally more probable that the party who secured the prohibition has likewise made the further groundless affirmation that the plea in court christian has been sued after the prohibition, in order that the original case in court christian may come to the attention of royal justices and the rivalry of the two courts turn perhaps to the advantage of the interested party. Or have we here a forerunner of the practice known to Blackstone as 'declaring in prohibition?' By this latter, in cases where complications make it inadvisable for the king's court to issue a categorical prohibition, a party may 'declare in prohibition,' that is, affirm by a legal fiction that his adversary has already continued an action in court christian against a prohibition.[8] While this latter is obviously untrue, the subsequent writ of attachment will permit of a discussion of the nature of the original ecclesiastical case. Unfortunately, none of the legal writers of the thirteenth century make mention of the use of such a fiction, nor do the documents point to it. On the contrary, having to state the exact time and place of the delivery of the writ of prohibition and even name the witnesses who were present seems to rule out the possibility of a 'declaration in prohibition,' where, in reality, no writ was ever issued; unless, of course, the addition of these details in the thirteenth century is also part of the fiction.

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[3] If there were anything for the ecclesiastical courts of the same nature as the plea rolls for royal courts, a general estimate would perhaps be possible. But for the greater part of the thirteenth century, records of ecclesiastical courts are negligible.

[4] Cf. Norma Adams, "The Writ of Prohibition to Court Christian,' *Minnesota Law Review*, XX (1936) 278.

[5] Once more it should be noted that the king would of course appear as plaintiff, if he personally were involved as one of the parties (see above p. 233, n. 14); moreover in the latter part of the thirteenth century the special *ex relatu plurium* type of prohibitions brought the king in as plaintiff in order to conceal the identity of the one who had actually sued the prohibition when this latter happened to be a cleric (see the article dealing with this matter in *Mediaeval Studies*, III, 1941, 101-116).

[6] Bracton, *De Legibus*, IV, 272. The ordinary manner of giving assurance (*securum facere*) is to find guarantors who will answer for the plaintiff's appearance to sue his plea. Two guarantors suffice, although there may be more. Such details as these come out in the records of cases where the plaintiff withdraws his plea or fails to appear on the day appointed, for then both he and his pledges (*plegii de prosequendo*) are amerced (KB 26/92 m. 5d, an. 1225; KB 26/121 m. 25, an. 1241; KB 26/171 m. 15d, an. 1262; CP 40/33 m. 4, an. 1280, etc.). A register of the years 1272-1274 intimates, nevertheless, that being allowed to find pledges is something of a favour: 'Ista inventio plegiorum de prosequendo non conceditur omnibus nisi ministris regis vel curie, vel quibus cancellarius de gratia sua voluerit concedere' (British Museum, *Additional Ms.* 38821, fol. 7). There is another way of giving assurance, which is sometimes permitted; the plaintiff's oath may exceptionally be taken as sufficient. In a case of the year 1280, where the plaintiff could not find pledges, we are told: 'et quia fecit justiciarios hic securos per fidem, quia pauper est, . . . preceptum est vicecomiti quod attachiaret . . .' (CP 40/34 m. 65); a similar case occurs on m. 11d of the same roll. This special provision for the poor is mentioned in registers; e.g. Brit. Mus., *Add. Ms.* 38821, fol. 7.

In any case, no attempt is made at this point in the proceedings to verify the statement that the court christian has deliberately ignored a prohibition. The simple affirmation of the defendant is sufficient to obtain a writ of attachment. This writ is addressed in the king's name to the sheriff of the county where the plaintiff and judges of the ecclesiastical court reside, commanding him to make them appear before the royal justices. The form of the writ given by Bracton[9] is as follows:

> Rex vicecomiti salutem. Si A. fecerit te securum de clamore suo prosequendo, tunc ponas per vadium et salvos plegios B. talem ordinarium, quod sit coram nobis vel justitiariis nostris apud Westmonasterium vel coram justitiariis nostris ad primam assisam cum in partes illas venerint,[10] ostensurus quare tenuit placitum in curia christianitatis de laico feodo ipsius A. in tali villa contra prohibitionem nostram, vel de advocatione talis ecclesiae, vel de debitis et catallis quae non sunt de testamento vel matrimonio et hujusmodi.[11] Pone etiam per vadium et salvos plegios C. quod tunc sit ibi ostensurus quare secutus est idem placitum in eadem curia christianitatis contra prohibitionem nostram. Et habeas ibi nomina plegiorum et hoc breve.[12] Teste etcetera.

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[7] In a plea reported in the *Year Book, 20-21 Edward I* (Rolls Series; London, 1866), p. 281, one of the pleaders announces that 'chescun parole en court n'eyt pas a charger, ke yl ne sount for paroles de la court.'

[8] *Commentaries* (5th ed., London, 1773), III, 113. Miss Norma Adams is of the opinion that contempt of the writ of prohibition was no legal fiction in the thirteenth century (*art. cit.*, p. 281, n. 35).

[9] *De Legibus*, IV, 272.

[10] These three divisions form but one and the same *curia regis*.

[11] In specifying the plea, this writ must correspond exactly with the writ of prohibition.

[12] This detail is important for the functioning of the English writ system. No plea can be instituted before the king's justices without an 'original' writ (i.e. one which of itself 'originates' a plea), or a writ of attachment. Since the writ of prohibition is not an 'original' writ, the writ of attachment is indispensable for suing a plea of prohibition; cf. Norma Adams, *art. cit.*, p. 277. In a case of the year 1242, the defendant in the king's court maintains that he had never been cited to appear for transgressing a prohibition; and, since 'nullum

It may easily happen that the ecclesiastical judges and the plaintiff reside in different counties. In which case two or even several writs of attachment, according to the circumstances, will be addressed to the respective sheriffs. It would be better to say *may* be addressed to the respective sheriffs, for there is no fixed rule as to who will be the object of a pursuit. Often enough the plaintiff alone is cited. This depends entirely on the will of the one who sues the writ; he is free to sue a writ of attachment against the party, or against the judges, or against both if he so desires.[13]

In order to follow more easily the steps of the procedure in the king's court, a division will aid considerably. There are first of all the interminable efforts to oblige the defendant[14] to appear in court, comprising what is called the judicial 'process'. Once the two parties do come before the justices, the plaintiff states his case; this is referred to as his *narratio*, or *intentio*, or *declaratio*. Whereupon, the defendant makes his reply (*responsio*). These two, along with further rejoinders, form the 'pleading'. Finally, there will remain two other stages to be considered: the methods of proof, and the sentence rendered. Hence the plan to be followed: (1) Process; (2) Pleading; (3) Proofs; (4) Sentence.[15]

A. *Process*

In the thirteenth century it is still very difficult to bring the defendant into court. Even a summary examination of the plea rolls suffices to illustrate this.

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breve de eo invenitur,' he is dismissed (KB 26/123 m. 20d). The sheriff is the one responsible for the writ of attachment; if he is unable to deliver it for any reason, such as the removal of the party from that county, it is his duty to return the writ, noting on the back the reason why he was unable to deliver it. Certain franchises, feudal and urban, held as a privilege the right to make the *returnus brevium* (Pollock and Maitland, *Hist. of Engl. Law*, I, 583, 640, 644).

[13] The following note is found in a register dating from the first years of Edward I's reign: 'Et sciendum quod ille qui impetrat breve de attachiamento fieri, si velit, potest facere judicem attachiari et retachiare (*corr.* retrahere) se versus partem sequentem ita quod non atachietur, vel facere atachiari partem et retrahere se versus judicem, vel quod ambo attachientur' (Brit. Mus., *Add. Ms.* 38821, fol. 8v). The same note occurs in other registers of approximately the same and later date: Cambridge University Library *Ms.* Ee. I. 1, fol. 197v; Brit. Mus., *Add. Ms.* 34194, fol. 12, etc. And it is still found in Fitzherbert, *The New Natura Brevium* (9th ed., London, 1794), fol. 40I.

[14] Henceforth the terms 'defendant' and 'plaintiff' will refer to the plea in the royal court. The roles are therefore now reversed: he who was the defendant in court christian has become plaintiff in the king's court, whereas the plaintiff and judges of the court christian are now defendants.

[15] As already indicated, the plea rolls of the *curia regis*, which have manifestly provided considerable information about the foregoing steps of procedure, are almost a source unique for the reconstruction of the prohibition plea. These rolls are preserved in the Public Record Office at London. The 220 odd rolls covering the period to the close of Henry III's reign are all classified under the shelf mark KB 26/; most of the earlier ones to 1220 have been published by the P.R.O. as *Curia Regis Rolls*. Only with the first year of Edward I is a distinction made in the classification between rolls of pleas heard before the 'King's Bench' (KB 27/) and those of 'common pleas' heard before the Bench at Westminster (CP 40/). With the exception of a few rolls in the 1220's, all the KB 26/ rolls have been examined systematically for the purposes of this study. After 1272 the rolls become so voluminous that it was necessary to make a choice, hence all the CP 40/ rolls for every fifth year (1275, 1280, 1285) have been studied methodically and soundings have been taken in the rolls of intervening years as well as in the KB 27/ rolls. The stopping point was determined by the date of *Circumspecte Agatis* (1286) which was taken as the *terminus ad quem* of this study (cf. previous article, *Med. Studies*, VI, 1944, p. 262, n. 3). The assize rolls of the itinerant justices differ little in character from the KB 26/ rolls; in order to assure ourselves of this fact we have been content to consult the manuscript rolls for a few counties in addition to the rolls that have been published for other counties by local societies: Bedfordshire Historical Society (vols. I, III, IX); The Record Society for the Publication of Original Documents Relating to Lancashire and Cheshire (vols. I, II); Lincoln Record Society (vol. XXII); Northamptonshire Record Society (vol. V); Newcastle-on-Tyne Records Committee (vol. II) and Surtees Society (vol. LXXXVIII) both for Northumberland; Stafford Historical Collections (vol. III, IV, VI, VII); Somerset Record Society (vol. XI, XXXVI); Yorkshire Archaeological Society, Record Series (vol. XLIV).

Cases are put off from term to term and from year to year because the defendant is not present. In 1285 may be found an example where, at the end of five years, the ecclesiastical judges have not yet appeared in answer to a summons.[16] A 'process' extending over three or four years is not at all exceptional. The delays may be for quite legitimate reasons, for the system of essoins or excuses is long and complicated. Bracton has written page after page on this subject, and the lists of essoins to be found in the plea rolls are almost endless: essoins because of sickness (*malum lecti*), because of a broken bridge making a road impassable,[17] because of a pilgrimage, because of a crusade, etc. Indeed, the practice allowed a person to be essoined three times without any reason at all being adduced.[18] Moreover, if there were several defendants, an almost indefinite postponement could be effected by each one essoining himself alternately.[19] In addition to all these perfectly legitimate delays by means of essoins, there were the many others where the defendant simply refused to appear. It is astonishing with what slowness pressure was brought to bear on such a delinquent, by a long series of attachments, distraints, etc. The screw is turned very slowly, observes Maitland.[20] 'The law wants to be exceedingly fair', he goes on, 'but is irritated by contumacy. Instead of saying to the defaulter, "I don't care whether you appear or no," it sets its will against his will: "But you shall appear." '[21] When it is recalled that every postponement, whether for essoin or attachment, involved a delay of some three months,[22] it is not hard to understand how the process could be drawn out over a period of years.

There is no need of going into the details of process here, since process in connection with a plea of prohibition is in no way exceptional, but is governed, as Bracton observes, by the same rules as in other personal actions.[23] It will therefore suffice to note briefly the different steps which he describes, whereby pressure on the defendant is gradually increased in an effort to oblige him to come into court: (1) Summons (*summonitio*);[24] (2) Attachment by pledges (*attachiamentum per vadium et plegios*),[25] (3) Attachment by better pledges (*per meliores plegios*); (4) *Habeas corpus*;[26] (5) Seizure of goods (*districtio per terram, bona et catalla*); (6) More severe seizure; (7) Still more severe seizure;[27] (8) Outlawry (*utlagatio*).

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[16] CP 40/57 m. 19; same case as in CP 40/33 m. 22d and CP 40/36 m. 31d (Easter and Michaelmas, 1280).

[17] Maitland has certainly reason to draw attention in this regard to the difficulties of travel in those days; Pollock and Maitland, *Hist. of Engl. Law*, II, 591.

[18] Glanvill, *De Legibus*, bk. IV, c. 9.

[19] In essoining oneself, guarantee must be given to appear on the day appointed by furnishing two pledges. Should another default occur without being essoined, the pledges will be amerced, and distraint exercised against the defendant.

[20] *Loc. cit.* When the delinquent finally does appear, he may be amerced for each default. Thus in certain rolls for 1280-1285 we find at the beginning of the minute which records the appearance of the defendant: 'Talis in misericordia pro pluribus defaltis' (CP 40/32 m. 83d; CP 40/33 m. 36, 56; CP 40/60 m. 85, 105, 113d, etc.; cf. plea published in appendix no. VIII).

[21] *Op. cit.*, II, 595.

[22] The judicial 'terms' began with the feast of St. Hilary (Jan. 13), Easter, Trinity Sunday and the feast of St. Michael (Sept. 29); or, more correctly, with the octave of each of these four feasts.

[23] *De Legibus*, IV, 272-274; the greater details for attachment and distraint are found in same volume, pp. 363-375.

[24] This step is lacking in the case of contempt of a prohibition; the sheriff is ordered at once to attach the party; Bracton *De Legibus*, IV, 272, and cf. above p. 237.

[25] The usual number of pledges is two, but more than this are frequently found, e.g. 6 (CP 40/33 m. 33), 5 (*ibid.*), 4 (CP 40/36 m. 109d) etc.

[26] This ends the various attachments; with the seizure which follows we pass to the different forms of distraint.

[27] 'Praecipitur vicecomiti quod ita distringat eum per terras et catalla quod capiat omnes terras suas et omnia catalla in manum domini regis, et capta in manum domini regis detineat . . . , et quod de exitibus respondeat domino regi' (*De Legibus*, IV, 368). The first seizure (no. 5) consisted in the mere formality of taking goods and chattels into the king's hand; the second one (no. 6) was strict enough to prevent the defendant from meddling with them; this one (no. 7) would be a real and effective seizure of them by the sheriff.

Each one of these steps is the subject of an enrolment in the minutes of the king's court. Frequently it happens that the sheriff, ordered each time by writ to do the attaching or distraining and obliged to see to the return of writs (*returnus brevium*), fails in his duty. One more cause therefore of delay in the process. But the patience of the court would seem to be inexhaustible. The sheriff in his turn is amerced, and the process goes on as before. *Sicut prius praeceptum est vicecomiti*, the plea rolls tell us.[28]

Against ecclesiastics compulsion was exercised in a slightly different way, although the beginning was the same up to the point where the sheriff reported that the defendant was a cleric. Clerics could not be forced to find pledges. If they were unwilling to do so, and if they possessed no lay fee by means of which they could be distrained, recourse had to be had to their ordinary, through whose cooperation distraint could be made by seizure of ecclesiastical benefice.[29] Very often, however, the bishop refused to take any such action against his clerics. Whereupon, he himself would then be cited before the king's court and bcome the object of summons, attachment *per plegios*, distraint *per baroniam* etc.[30] The case of compulsion against members of religious houses varied but little from that against ordinary clerics, except that recourse to the bishop was of no avail if these were exempt religious. Rare indeed are

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This same scheme for the process of compulsion is reproduced by Pollock and Maitland, *op. cit.*, II, 593.

[28] It has already been noted that certain franchises enjoyed as a privilege the right to make the return of writs. In this case, the bailiffs of the manor, borough, etc., upon an order from the sheriff, took charge of the various attachments and distraints, since by definition a franchise was a place where the sheriff could not penetrate to exercise his functions except in case of failure on the part of the local bailiffs. The latter eventuality was always provided for; if the sheriff informed the king's officials that the bailiff or bailiffs were unwilling to act, in spite of his order to do so, the next writ addressed to the sheriff would carry this formula: 'Praecipimus tibi quod non omittas propter libertatem talis quin ponas B. per vadium et salvos plegios quod sit etcetera, ad respondendum . . .' (Bracton, *De Legibus*, IV, 372). Practical examples of this procedure are to be found in abundance in the plea rolls. The following case is worth citing for the rather curious angle involved. The archbishop of Canterbury had been summoned to answer in the king's court for a plea heard in court christian against a prohibition; 'et ipse non venit, et preceptum fuit vicecomiti quod attachiaret eum: et vicecomes nichil fecit set mandavit quod preceperat ballivis libertatis Cantuariensis qui nichil inde fecerunt. Ideo preceptum est quod non omittat . . .' The archbishop was to be attached by his own bailiffs! (CP 40/11 m. 48: an. 1275).

[29] 'Mandavit (vicecomes) quod clerici sunt et noluerunt plegios invenire, nec habent laicum feodum per quod possunt distringi. Et ideo mandatum est episcopo Herefordensi quod faciat eos venire . . .' (KB 26/115B m. 29); cf. Bracton, *De Legibus*, IV, 372. During the vacancy of a see, recourse was to be had to the *custodes spiritualitatis*: e.g. KB 26/199 m. 20d (London, 1270), CP 40/32 m. 78d (Lincoln, 1280).

[30] Who takes this action against the ordinary? One would expect it to be the king, and indeed it would seem to be so in Bracton's time to judge by the general tenor of the entries in the plea rolls, although it is not stated explicitly. The following is a case given by Bracton himself: 'A. obtulit se quarto die versus B. de tali placito etcetera ut supra, et B. non venit, et alias mandatum fuit episcopo quod faceret eum venire ad talem diem. Ad quem diem non fecit eum venire, et ita quod preceptum fuit vicecomiti quod sommoneret eum quod esset ad hunc diem, et ibi haberet praedictum B. ad respondendum etcetera. Et similiter quod episcopus esset ad ostendendum quare non fecit eum venire ad talem diem sicut ei mandatum fuit' (*De Legibus*, IV, 374-375) cf. KB 26/106 m. 12 (1230), KB 26/137 m. 11 (1250), KB 26/164 m. 14 (1260). In the latter half of the thirteenth century, however, the entries specify that it is the plaintiff who takes this action against the ordinary: 'Wilhelmus de Bello Campo et Johannes de la Hull se optulerunt quarto die versus Petrum Herefordensem episcopum de placito quod esset ad hunc diem et ibi haberet Radulfum personam ecclesie de Linderugge ad respondendum de placito quare secutus est placitum in curia christianitatis . . .' (KB 26/156 m. 32; an. 1254). The three examples in this same roll are the first ones I have found; from 1260 on, the enrolment in this form is the usual one. In view of these entries and the general tendency in the thirteenth century for the entries to become more specific, it is quite possible that the vaguer entries for the earlier part of the century refer to the same procedure as here, where the plaintiff and not the king pursues the defaulting ordinary. Certainly this would be more in keeping with what has been noted several times before about the whole initiative throughout a plea being left to the plaintiff; see above pp. 232, 247.

the examples in the plea rolls where the bishop was instructed to oblige the defendant who was religious to come into court.[31] Attachment by pledges was more common for religious than for secular clergy; this failing, recourse to the abbot to bring his subject before the king's justices was the normal procedure,[32] corresponding to recourse to the ordinary in the case of secular clergy.

This will suffice to show the nature of judicial process in the English courts of the thirteenth century, as also to illustrate its slowness and tedious length. A word should be said, nevertheless, before leaving this subject, as to what happens when the plaintiff, not the defendant, fails to appear on the day appointed for the hearing of his plea. In this case, the plea is dismissed and the defendant allowed to go *sine die*, while the plaintiff and his pledges *de prosequendo* are amerced.[33] The guilt or non-guilt of the defendant does not even come into consideration; he benefits by the 'rule of the game,' and escapes further prosecution. It is important to note once more that the king enquires no further into the facts of the original case and the possible attaint to his authority in disregarding a prohibition. A further enquiry of this sort would have appeared too arbitrary to Englishmen of the thirteenth century and even of a much later date, when the mechanism of the judicial procedure was of greater importance than the initiative and individual discretion of the judges.

B. *Pleading*

Suppose that the adversaries are now in court, ready to have their case judged. It is the moment of the pleading. Although pleading in the thirteenth century was still oral (written pleading comes in at the extreme end of the fourteenth or the beginning of the fifteenth century),[34] we are able to know a good deal about this part of the procedure, since the scribes entered at once the plaint of the plaintiff and the defense of his adversary into the minutes of the court.

The pleading starts with the *narratio*[35] of the plaintiff,[36] a statement of the case which must be rigorously formulated; an omission or an error may result in the loss of the plea. Bracton describes the plaintiff's 'count' as follows: 'Proponat querens intentionem suam contra eos in hunc modum: Ego A. conqueror de B. quod me injuste vexavit et gravavit trahendo me in placitum

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[31] *Curia Regis Rolls*, II, 87.

[32] KB 26/133 m. 8d (1244); CP 40/9 m. 6 (1275).

[33] 'Et Galfridus non venit etc. Et fuit querens. Et ideo priorissa sine die, et Galfridus in misericordia et plegii de prosequendo' (KB 26/92 m. 5d; an. 1225). For further examples: *Curia Regis Rolls*, IV, 26-27 (1206), VIII, 224 (1220); KB 26/133 m. 3 (1244); CP 40/33 m. 4 (1280). An exceptional case of the year 1200 adds the detail that the ecclesiastical judges are therefore to be authorized to proceed with the action in court christian.

Sometimes the minute says simply: 'Querens non est prosecutus,' in which case the result is the same (KB 26/121 m. 18d, 23d; an. 1241). Similar to this is the case where the plaintiff appears in court, but for the express purpose of withdrawing from his plea. Such a withdrawal results normally in an amercement. Thus in 1225: 'Willelmus qui inplacitavit abbatem de Bardenay et conjudices suos de placito prohibitionis . . . venit et retraxit et posuit se in misericordia' (KB 26/92 m. 18d). In a plea of the year 1230, the plaintiff proceeds somewhat differently: 'Bartholomeus Beneit qui tulit breve de prohibitione super priorem Dunholmensem de debitis et catallis que non sunt de testamento vel matrimonio venit et petit licentiam recedendi de breve suo, et habet' (KB 26/106 m. 2d). But this permission to withdraw has likewise to be paid for, as is seen from a list of fines and amercements in a Yorkshire roll of 1275, where is recorded the payment of half a mark 'pro licentia recedendi brevi' (*Assise Roll* 1034 m. 7d; the nature of the particular writ referred to is not specified).

[34] Holdsworth, *Hist. of Engl. Law*, III, 640 foll.

[35] *Narratus* is also found (KB 26/129 m. 1d); Bracton prefers the Roman term *intentio* (*De Legibus*, IV, 274). In French, *conte* and *encoupement* are both found.

[36] The plaintiff has the right to be represented by an attorney, if he so chooses.

in curia christianitatis de laico feodo meo, scilicet tali.[37] Et exprimat qualitatem terrae vel alterius tenementi, vel si de debitis et catallis quae non sunt etcetera, tunc exprimat cujusmodi debita et cujusmodi catalla de quibus implacitatus fuerit; et quod hoc fecerit contra prohibitionem, et unde damnum ad valentiam etcetera.'[38]

The plaintiff must look to two things particularly in his count. First, he must state anew the complaint he made in obtaining the writ of prohibition and which is contained in the writ, and woe to him if his count be at variance with the writ as to the nature of the original plea in court christian or to any details stated in the writ.[39] Secondly, he must develop and explain more fully the too succinct statement of the case contained in the writ. Here, too, the plaintiff must be careful, else he may convict himself out of his own mouth, as in a case from the Hilary term, 1238, where the details furnished in the count bring out the fact that the chattels in question were being disputed as a result of a marriage separation; the chattels were therefore not lay, as stated in the writ, but matrimonial, and the plea ought rightfully to be sued in court christian.[40] A comparison of the count as substantially reproduced in the minutes of the plea rolls with any typical writ of prohibition would illustrate how the plaintiff restates his complaint, but also expands it by adding further details.[41]

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[37] A case copied into a manuscript of the year 1256 or thereabouts (the latest date mentioned in a case is Trinity 1256) gives us a more dramatic form of the count: 'Hoc monstrat vobis A. qui hic est quod B. qui illuc est . . .' (Brit. Mus., *Add. Ms.* 35179, fol. 36); cf. *Britton*, ed. Nichols (Oxford, 1865), I, 103. This form, where the plaintiff seems almost to point to himself and his adversary, is found again in the French of the *Brevia Placitata* of the last quarter of the century: 'Ceo vus mustre J. que ci est que G. que la est a tort ad siwi plai en cort cristiene de chateus encontre la defense nostre seingur le Rey et por ceo a tort que . . .' (Brit. Mus., *Add. Ms.* 38821, fol. 58; the same, with but slight differences, occurs likewise in Bodleian Libr. *Rawlinson Ms.* C 331, fol. 21 and Cambridge Univ. Libr. *Ms.* Ll. IV. 17, fol. 167v).

[38] *De Legibus*, IV, 274.

[39] In the Michaelmas term of 1236 is a case where the writ of prohibition speaks of debts and chattels, whereas in the count defamation was alleged. The defendants have only to point this out in order to obtain the decision: 'quod Robertus (*plaintiff*) nihil capiat per breve suum, sed sit in misericordia pro falso clamio' (Prynne, *Records*, III, 92). In another example, the plaintiff refers to a plea of lay fee; but the writ of prohibition had been for lay chattels; wherefore he is deemed to have 'receded from his writ' (KB 26/129 m. 1d; Easter 1243). See also cases cited above p. 233, nn. 17, 18. Among some notes inserted in a manuscript between two Registers and relating to cases and judgments of the years 1252-1256, is one which emphasizes that the facts stated must be precise; the plaintiff must be able, for instance, to say exactly what chattels are in question: 'In brevi prohibitionis querens nescivit dicere de quibus catallis etc., ita quod reus inde sine die' (Brit. Mus., *Add. Ms.* 35179, fol. 39).

[40] The writ of prohibition addressed to Roger Niger, bishop of London (1229-1241) was against a *placitum de catallis que non sunt etc.* The bishop failed to defer to the prohibition, hence the subsequent plea in the king's court. There the plaintiff recounted 'quod idem episcopus trahit eum in placitum in curia christianitatis et petit ab eo cattala ad valenciam quadraginta solidorum occasione cujusdam devorcii celebrati inter ipsum et quandam mulierem quam ipse desponsaverat, et imponit ei quod catalla illa fuerunt ejusdem mulieris . . .' The decision is easily reached: 'Et episcopus venit, et quia manifestum est quod catalla illa sunt de matrimonio, sicut idem cognovit, consideratum est quod episcopus inde sine die et quod procedat si voluerit, et Godefridus (*plaintiff*) in misericordia' (Prynne, *Records*, III, 97). There is a similar example in *Assise Roll* 573 m. 103 (1286): 'Rogerus de Wells in misericordia pro falso clamio versus magistrum Gregorium de Ponte Fracto eo quod questus fuit ab eo de hoc quod ipsum inplacitavit in curia christianitatis de sex marcis, cum per propriam confessionem predicti Rogeri compertum sit quod predicte marce fuerunt de arreragio decimarum ecclesie . . . et quod quidem placitum spectat ad curiam christianitatis.'

[41] The following from the Trinity roll for 1254 (KB 26/154 m. 20d) is a good example of these minutes: 'Magister Johannes de Cadamo et Josephus vicarius de Castrehunt attachiati fuerunt ad respondendum Johanni Gilberd de placito quare secuti sunt placitum in curia christianitatis de catallis et debitis que non sunt de testamento vel matrimonio contra prohibitionem etc., et unde queritur quod cum ipse die lune proxima post mediam Quadragesimam anno XXXVI° (*March 11, 1252*) detulisset eis breve domini regis in ecclesia Beate Margarete de Ponte de Tywele ne predictum placitum sequerentur, predicti magister Johannes et Josephus, spreta predicta prohibitione, fecerunt vacare predictum Johannem coram magistro Waltero officiali archidiaconi Middelsexe, et petierunt ab eo septies centum fagotos de busca, quos ipse

The plaintiff's mere statement is not enough; he must be ready to offer proof of the veracity of his story. The usual way of doing this is to promise a suit of witnesses; the vast majority of minutes add at once after the plaintiff's count: 'et inde producit sectam.' Indeed, the action is valueless without a suit being presented at this point; the defendant has only to defend himself 'as against one who has no suit' in order to be dismissed *sine die*, while the plaintiff is amerced *pro falso clamore*.[42] The *sola vox* (*nude parole* in the French texts) of the plaintiff is altogether insufficient. Nor is the support of one single suitor enough, for, according to the old adage, *testis unus testis nullus*; two witnesses are required as a minimum for a suit.[43] The exact role of the suitors at this moment in the procedure is somewhat obscure. What do they do? What do they say? Perhaps nothing. The records provide no information on this subject. Bracton does speak of the possibility of an interrogation of the witnesses at this point,[44] but the accounts in the plea rolls of his time offer us no examples of the same.[45] Apparently all that is necessary for the time being is to have the suitors present as an offer of proof. Real proof is not required of the plaintiff until after the defendant's reply has been heard; and it may not be required at all, if the court decides that the burden of final proof rests with the defendant.

The presentation of a suit of witnesses may be replaced by offering sufficient documentary evidence to substantiate the count. Such, at least, would seem the conclusion to be drawn from certain judgments rendered against a plaintiff and stating that he neither produced a suit nor could offer documents as proof.[46] The documents in question would very probably be the *acta* or official record of the action in the ecclesiastical court.

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emerat de quodam Laurentio de Sancto Michaele, et fecerunt eum suspendi ab ingressu ecclesie. Unde dicit quod per hoc quod inplacitaverunt ipsum in predicta curia deterioratus est et dampnum habet ad valenciam centum solidorum; et inde producit sectam etc.'

It should be noted that this detailed account is given only when the two parties have actually appeared in court, for then only is the count presented. In cases where one party has not come, the minute stops at *post prohibitionem etc.* with the added mention that so-and-so did not come. Moreover it is probable that the count had been much less formal in the earlier part of the thirteenth century; at least the enrolling of it was. In the reign of John, the minute runs thus: 'Willelmus prior de Westacra, Simon prior de Pentenay, summoniti ad respondendum quare processerunt in causa de advocatione ecclesie de Tiwingeton et de Haltobosco inter Petrum de Haltobosco et priorem de Ludham, venerunt et dixerunt quod ipsi prius acceperunt breve justiciarii prohibentis ne procederent . . .' (*Curia Regis Rolls*, I, 352; similarly, vol. VI, 79). There is no trace of the *narratio* or count. Sometimes what is presented in the minute as a rejoinder of the plaintiff looks like the count (*ibid.*, IV, 69-70), while occasionally we have the count itself, but stated very briefly; e.g. 'Eborardus de Binetre queritur quod Herebertus frater ejus traxit eum in placitum in curiam christianitatis de laico feodo suo contra prohibitionem justiciariorum; et Herebertus venit et interrogatus dicit . . .' (*C.R.R.*, I, 405). As early as 1220, the minute begins to resemble more closely the form given just above which reproduces the substance of the count, although it is much less detailed at this date. By 1235-1240, the details become richer.

[42] Examples of this are relatively numerous; thus, KB 26/92 m. 7 (1225); KB 26/106 m. 10 (1230); *Somersetshire Pleas*, I, 347, n° 1323 (1247); KB 26/143 m. 19 (1250): KB 26/176 m. 30d (1266); etc.

[43] 'Et quia . . . nullam sectam sufficientem producunt nisi unum hominem, consideratum est quod Ricardus (*defendant*) inde sine die' (KB 26/107 m. 33; an. 1230); cf. Bracton, *De Legibus*, IV, 275. The number of suitors is by no means limited to two; it is often more and Bracton recommends that it should be so: '. . . et inde statim producat secam sufficientem, duos ad minus vel tres vel plures si possit' (*ibid.*)

[44] 'Si de veritate dubitetur, examinentur diligenter de die et loco et circumstantiis . . .' (*ibid.*)

[45] There is one example from the first years of the century (1206) which would seem to indicate that originally the witnesses played a more active part at this point. After the plaintiff's count, the minute runs on: 'Et inde producit duos testes qui, ut dicunt, interfuerunt ubi eos traxit in placitum post prohibitionem . . . qui testantur sicut dictum est et hoc offerunt probare etc.' (*Curia Regis Rolls*, IV, 69-70).

[46] 'Quia predictus Robertus nullam inde producit sectam, nec potest ostendere per editionem vel per instrumenta [quod reus] umquam implacitavit in curia christianitatis . . .' (KB 26/147 m. 21: an. 1252); there are other similar cases: KB 26/123 m. 14 (1242), KB 26/135 m. 19 (1249).

When the count is ended and the offer of proof made, the defendant has his chance to reply. Those cases where he admits at once the charge brought are infinitely rare; so much so that it is enough to mention that it may happen.[47] The classic reply is to deny (*defendere*)[48] what has been said by the plaintiff. Maitland appears to affirm that throughout most of the thirteenth century the defendant is obliged to deny the charge word by word.[49] This is not altogether true according to the evidence provided by the minutes of the plea rolls, at least for cases relative to prohibition. They indicate that it is necessary to distinguish three periods.

The reigns of Richard I and John, for which the *Curia Regis Rolls* are published, constitute a rather vague and indecisive first period. Sometimes there is the formal denial, 'word for word';[50] sometimes, however, the court comes at once to a discussion of the nature of the original plea in the ecclesiastical court, without there being any evidence of a direct denial made to the allegation of the plaintiff.[51]

The first twenty-five years or so of the reign of Henry III are a second period during which there is scarcely an exception to the general rule that the defendant deny outright the count of the plaintiff; only after that will he go on to enlarge on particular circumstances which he wishes to invoke in his favour.[52]

Finally towards 1240, the denial, while still made, becomes a general formula which scarcely varies, whatever be the nature of the case; and it is followed by a statement of special circumstances, 'exceptions', etc.[53] What chiefly characterizes this third period is the ever increasing importance attached to the second part of the reply, rather than to the formal denial. It is this development on the part of the defendant along with the further retorts of the plaintiff that really constitute the 'pleading' so peculiar to English procedure, 'pleading' which strives to find an 'issue' either of fact or of law on which a jury may pronounce itself. As procedure tends more and more in this direction, less attention comes to be paid to the formula of negation which is treated as mere *paroles de la court* and replaced in the minutes by the abbreviation, *et cetera.*[54] The formula counts for so little that, should the defendant really wish to deny the story told by the plaintiff, he first repeats the usual formula and then proceeds to a more precise denial of what has been alleged against him.[55]

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[47] The following is an example: 'Hugo de Redmerestweit, de quo Willelmus Burdun questus fuit quod ipse traxit in curia christianitatis contra prohibitionem domini regis Agnetem uxorem ejusdem Willelmi, venit et cognovit; et est in misericordia. Misericordia tres marce. Et ideo prohibitum est ei ne decetero eam trahat in placitum' (*Curia Regis Rolls*, V, 148; an. 1208). Very like this is the case where the defendant consents at once to withdraw the action begun in court christian; e.g. 'Godefridus de Ammon qui inplacitavit priorem Bathonis quare tenuit placitum in curia christianitatis . . . venit et cognovit quod prior desistit a placito. Et ideo inde sine die etc.' (KB 26/104 m. 5d; an. 1230); cf. *ibid.*, m. 8d, also *C.R.R.*, II, 85.

[48] 'In cent. xiii *defendere* is currently used in both its two senses, (1) *protect*, and (2) *deny* with accusative of thing or with a *quod* which introduces the statement that is denied.' (Pollock and Maitland, *Hist. of Engl. Law*, II, 607, n. 5).

[49] *Ibid.*

[50] 'Willelmus venit et totum defendit et inde ponit se super legales homines de visneto' (*C.R.R.*, I, 103). 'Nicolaus defendit totum de verbo in verbum sicut curia consideraverit' (*C.R.R.*, IV, 195; also II, 28).

[51] 'Et Herebertus venit, et interrogatus dicit quod inplacitavit eum super lesionem fidei sue . . .' (the writ had said 'de laico feodo') *C.R.R.*, I, 405; for other examples see II, 173-174; VI, 79, 110.

[52] An. 1220: 'Et prior venit per attornatum suum et defendit contra eos et contra sectam suam quod nunquam secutus fuit placitum in curia christianitatis de advocatione ecclesie predicte. Set verum vult dicere: contigit in tempore guerre . . .' (*C.R.R.*, VIII, 370). An. 1230: 'Et priores veniunt et defendunt quod nunquam post prohibitionem tenuerunt aliquod placitum de aliquo laico feodo nec tenebunt; sed revera tenuerunt placitum de quatuor marcis quas idem Anxellus promisit in maritagium . . .' (*Bracton's Note Book*, II, 354, nº 442).

[53] 'Et Anselmus venit et defendit vim et injuriam et dicit quod nunquam inplacitavit eum de aliquo laico feodo post prohibitionem nec antea, et revera quod ipse est executor testamenti . . .' (KB 26/119 m. 6d). The formula *defendit vim et injuriam* becomes constant. The example just cited, taken from a roll for the year 1238, is the earliest one I have seen (cf. Norma Adams, *art. cit.*, p. 281, n. 36). From 1242-1243 on, its use becomes regular and soon the words *sicut curia consideraverit* are added. Sometimes the formula is lengthened to *defendit vim et injuriam et dampnum (et totum)* KB 26/123 m. 20d. Or it may be reduced to *venit et defendit totum etc.* (KB 26/152 m. 5; an. 1254). It ought to be noted that the word 'exception' is used in English procedure in a very wide sense (Pollock and Maitland, *Hist. of Engl. Law*, II, 614).

This evolution in the form of the reply belongs more properly to the history of procedure and is of less importance for the study of prohibition than is the actual substance of the reply which has now to be considered.

If the defendant contents himself with a flat denial of the accusation made, he must offer at once to prove it. In pleas relative to prohibition, he always makes his offer *sicut curia consideraverit*, and the court orders him to 'wager his law' and come at a certain date to 'make his law'.[56] The question of proof and the methods used is treated in a later section. But regarding the negation itself, just what does it imply? Does the defendant deny the nature of the action in court christian as stated in the writ of prohibition (i.e. does he deny that it was a plea of lay fee or chattels etc.), or does he deny that he has continued to sue the plea after receiving the royal prohibition? It is impossible to settle this problem in cases where there is but a simple and outright denial, since the defendant reproduces exactly the accusation of the plaintiff. The negation adds nothing by way of precise facts to our knowledge of what actually took place.[57]

More frequently, however, the defendant's reply is not a thoroughgoing denial but adds, after the routine negation formula, some exception or exceptions which really give his version of the story, or at least show more exactly what he denies or questions in the plaintiff's count. Bracton considers replies of four types that may be made by way of exception:[58] (1) the prohibition ought not to have a place, in view of the truly spiritual nature of the original action before ecclesiastical judges; (2) the action did not continue after the reception of the prohibition; (3) no writ of prohibition was ever received against the action; (4) the party who has sued the writ of prohibition had previously renounced, in writing even, the secular forum and all recourse to prohibition. This division of Bracton's will serve well as a plan for studying the substance of defendants' replies; but we shall take the liberty of reversing his order for the practical purpose of disposing of the three shorter divisions, before considering the longest one.

If the defendant's reply is to the effect that recourse to the secular forum had previously been renounced by both parties, it will profit him little. In the eyes of the royal authority, this could never be a valid excuse for refusing to obey a prohibition. The king recognizes no reason as sufficient to justify renouncing the secular forum when the matter is purely temporal; no more than does the Church admit of clerics renouncing for any reason whatever their *privilegium fori*. A writ of prohibition has therefore still a place under these circumstances, but an important distinction must be made. The prohibition has a place and ought to be observed as regards the king in order to protect his right of jurisdiction; but it will in no way profit the party who has sued the writ but had previously consented to submit to the ecclesiastical forum.[59] And not only will the judges and the plaintiff of the court christian have to answer for the plea contrary to a writ of prohibition, but the defendant also of that court will be punished on account of the prejudice done to the royal authority by his renunciation of the king's jurisdiction. It is, in fact, the latter party who is to be treated the more severely.[60] Such is the intransigent doctrine stated in the *De Legibus* of Bracton,[61] and confirmed in practice by the decision rendered in a case from the *Note Book* for the year 1231.[62] Nevertheless, another case of about the same date (1232) proves that the principle might weaken in practice, for the justices decide on this occasion that the ecclesiastical judges may continue in spite of a prohibition, to hear the plea before them once it has been proven that the two parties had obliged themselves in the first place to take their dispute before the bishop's court, should there be any breach of the contract between them, which dealt nevertheless with lay chattels.[63] Did litigants frequently renounce the right of recourse to the secular forum? Probably not; these two cases from the *Note Book* are the only recorded examples we have met. The constant pressure brought to bear against this procedure must have checked it early and effectively. It is the same for the closely allied case of *fides data* in connection with contracts in order to make sure that any subsequent dispute will come into the spiritual instead of the secular forum.[64] Nevertheless, even at the end of the thirteenth century, one still has to renounce all recourse to prohibition among the other things in the long list of renunciations to be found at the end of contracts for debt.[65] But it would be rash indeed to base an argument for the continued existence of an institution or practice on the mere fact that it is mentioned in the final clauses of charters or letters, especially clauses of renunciation in private acts. A usage is sometimes mentioned there even centuries after it has disappeared.

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[54] Holdsworth, *Hist. of Engl. Law*, III, 630 ff.; Pollock and Maitland, *op. cit.*, II, 608. The negation loses its literal sense so completely that a defendant will deny the accusation and then ask the court if he is bound to answer a plaintiff who has no suit of witnesses, as though the fact of denying what his adversary has said did not constitute a reply! (KB 26/123 m. 14; an. 1242).

[55] 'Et Willelmus persona venit et defendit vim et injuriam quando etc.; et bene defendit quod nucquam secutus fuit aliquod placitum in curia christianitatis post predictam prohibitionem ei directam, et hoc offert defendere . . . sicut cura consideraverit' (KB 26/165 m. 22; Easter 1260).

[56] On this awarding of the proof as a 'medial' judgment, see Pollock and Maitland, *op. cit.*, II, 602; Bigelow, *History of Procedure in England* (London, 1880), 278-300. The 'wager of law' consists in giving security that one will come on a day appointed with a fixed number of oath-helpers to prove by oath the truth of a statement; 'making one's law' is the accomplishment of this undertaking; cf. below pp. 267-270.

[57] 'Et Hugo . . . bene defendit quod nucquam secutus fuit aliquod placitum versus eum in curia christianitatis de aliquibus catallis etc. que non sunt de testamento vel matrimonio postquam predictus Robertus detulisset ei predictam prohibitionem; et hoc offert defendere contra ipsum et sectam suam sicut curia consideraverit' (KB 26/165 m. 4; Easter 1260).

[58] *De Legibus*, IV, 275, 277.

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[59] Exactly parallel to this and tantamount to a renuncation of the secular forum is the case where the defendant in the ecclesiastical court has not only submitted to the action there but has gone so far as to appeal the decision before a higher ecclesiastical court before finally having recourse to a writ of prohibition (Bracton, *De Legibus*, IV, 269). Here too, the prohibition holds in so far as it forbids a secular plea in court christian, but the party having sued the writ loses all right to use it in a personal plea against his adversary in order to collect damages from the latter. For actual cases, see *Bracton's Note Book*, II, 343, n° 424 (1230); II, 422, n° 544 (1231); II, 585, n° 766 (1233); also the helpful annotations: 'Nota bene quod non habet locum prohibitio de catallis ubi reus per appellationem effectus actor' (p. 422); 'Nota de prohibitione, quod si perventum fuerit ad judicium ante prohibitionem, quod nichil fuerit nisi sententia proferenda et adjudicatione facta de absolutione vel condempnatione, locum ulterius non habebit' (p. 555).

[60] Bracton, *De Legibus*, IV, 277-278.

[61] *Loc. cit.*; cf .pp. 269, 265, 277-278.

[62] Vol. II, p. 499, n° 649; see below p. 262, n. 90.

[63] Vol. II, p. 522, n° 678. The annotator clearly disagrees with the decision of the justices in this case, and expresses himself in a way which accords with the opinion of Bracton about such a case. (Maitland uses this fact as one of his principal arguments for assigning the compilation of and annotations to the *Note Book* to Bracton; *ibid.*, p. 523). He has written in the margin in large letters the word, *ERROR* and has added the following note: 'Nota quod de consensu debitoris placitum procedit in curia christianitatis non obstante prohibicione regia de catallis que non sunt de testamento vel matrimonio, ex quo debitor se gratis subjecit jurisdictioni ordinarii loci; et ita prejudicatur rex, ut videtur.'

[64] Bracton, *De Legibus*, IV, 265; cf. *Med. Studies*, VI (1944) 278.

[65] The form of such renunciations, given in a *littera obligacionis* of Walter Bronescombe, bishop of Exeter, in connection with a loan made to him by certain Florentines (Jan. 23, 1278), is as follows: 'Renunciantes in premissis omnibus et singulis pro nobis, ecclesia nostra et successoribus nostris omni juris auxilio et remedio canonici et civilis, privilegio militie et fori, omni consuetudini et statuto, omnibus literis apostolicis et regiis impetratis et impetrandis, regie prohibicioni, judicum convencioni, constitucioni de duabus dictis in concilio generali, et omnibus aliis exceptionibus, juribus et defensionibus personalibus et realibus . . .'

The second type of defence that may be offered is that no writ of prohibition against the case in court christian was ever received. It is almost as infrequent as the foregoing one. Moreover, wherever it does occur, the defendant seems always to accompany his affirmation with a denial of the nature of the case such as the plaintiff has represented it.[66] The defendant undertakes to prove his statement, by wagering his law.[67] If he succeeds, he is dismissed.

Thirdly, the defendant may reply that the ecclesiastical action was not continued after the prohibition. Unlike the two preceding types of reply, this one occurs quite frequently, where the defendant avows, tacitly at least, the action in court christian without attempting to deny that it was of a secular nature, and avows likewise that a prohibition was received, but insists that the action did not proceed after the prohibition reached him.[68] Once more the ordinary way of giving proof is to wager and make one's law, unless more formal proof can be furnished, such as the 'acts' or other documents of the ecclesiastical court showing that the plea was stopped, as the defendant maintains.[69] If this fact is proven, the case against the defendant is dismissed.

Examples of this sort are interesting. They show that courts christian did in actual fact sometimes take cognizance of cases not properly of their jurisdiction. Here there is reason indeed for the king's writ of prohibition to intervene and to prevail. Hence, although the defendant may be exonerated in the royal court on the grounds that the plea in court christian did not proceed further once the prohibition was received, this prohibition remains effective. To make sure that this be well understood, the justices, while dismissing the defendant, do not fail to renew the prohibition in formal terms.[70]

These examples are instructive from still another point of view. From them

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(*Register of Walter Bronescombe*, ed. J. Hingeston Randolph, London, 1889, p. 18). In 1279 (Oct. 18), a certain layman promises to reimburse the bishop of Landaff for what has been paid out in his interest; should he fail to keep his promise, he will submit, he adds, to the jurisdiction of, and coercion by, any judge ecclesiastical or secular: '. . . renunciando sub virtute prestiti sacramenti regie prohibitioni et omni alio defensioni tam juris civilis quam canonici . . .' (Prynne, *Records*, III, 238); cf. *Calendar of Close Rolls 1272-1279*, p. 580.

[66] 'Abbas dicit quod nullam habuit prohibitionem, et preterea dicit quod non inplacitavit eos de catallis vel aliis rebus nisi de violenta manuum injectione de quodam monacho suo . . .' (KB 26/115B m. 14d; Mich. 1234); also KB 26/121 m. 34 (Trinity 1244), and the allusion in a letter addressed to Edward I (Aug. 28, 1297): '. . . predictis Antonio et Jordano tunc coram nobis comparentibus et asserentibus quod breve predictum (de prohibitione) eis nunquam porrectum aut oblatum fuisset' (Prynne, *Records*, III, 229).

[67] Bracton, *De Legibus*, IV, 275.

[68] In the Easter term 1220, the prior of Dunstaple and the abbot of Missenden, cited for having held a plea of lay fee contrary to a prohibition, reply 'quod contra prohibitionem nec post prohibitionem nunquam processerunt; et hoc idem probatum est . . .' (*Curia Regis Rolls*, VIII, 301). In 1225, the abbot of Hyde Abbey 'venit et defendit quod nunquam post prohibitionem tenuit placitum (de advocatione)' KB 26/92 m. 22; for similar cases, KB 26/111 m. 17 and m. 20d (Mich. 1232), KB 26/127 m. 17 (Hil. 1243), KB 26/152 m. 5 (Hil. 1254). The record for a case of the year 1241 is most explicit: 'Postea venit Magister Adam et bene cognovit quod aliquando implacitavit predictum Willelmum in curia christianitatis et petiit ab eo predictas XX marcas; et bene cognovit quod recepit prohibitionem domini regis ne amplius sequeretur placitum illud in curia christianitatis; set bene defendit quod postquam ita recepit etc., nuncquam postea secutus fuit placitum illud. Et hoc offert probare sicut curia consideraverit. Et ideo consideratum est quod ipse sit inde ad legem duodecima manu . . .' (KB 26/121 m. 14d; publ. in *Placitorum Abbreviatio*, p. 108).

[69] In the example cited in the previous note, the prior of Dunstaple and the abbot of Missenden furnish documentary proof.

[70] Although the minute of the case of the prior of Dunstaple and the abbot of Missenden records: 'De hoc placito eant quieti,' it adds nevertheless the further fact: 'Prohibitum est eis ne ulterius procedant in causa.' For similar statements, KB 26/111 m. 17 (Mich. 1232), KB 26/127 m. 17 (Hil. 1243), KB 26/152 m. 5 (Hil. 1254). This is what is known as a final prohibition.

it is evident that the defendants suffer no penalty for having attempted in the first place to sue or hear a purely temporal plea before a spiritual court. The reason is that this is an entirely different question; the question at issue in the plea to which they are defendants is whether they disobeyed a royal prohibition without sufficient reason;[71] if they did not disobey at all, then, of course, they are to be dismissed.

The fourth and last type of defendant's reply foreseen by Bracton affirms that the matter involved in the action prohibited was not of royal but of ecclesiastical jurisdiction; that the prohibition was therefore unwarranted and ought not to have a place. This is the most frequent of all in occurrence, and likewise the most interesting and informative. Just as the reply considered previously to this one reveals that some actions in court christian were quite legitimately prohibited since they belonged rightfully to the king's court, this response shows on the other hand the abuse to which the writ of prohibition was put to prevent ecclesiastical judges from hearing pleas of a truly spiritual nature.

Here the defendant does not contest the fact that the plea in court christian was sued after the prohibition was received, but bases his defence on the fact that the said plea was not what it was represented to be in the writ, but of another character altogether. The defendant seems to have been somewhat favoured by the formalism of the writ system. As has been seen, there were for most of the thirteenth century but three easily available writs of prohibition (special *de precepto* writs were much harder to obtain than these three *de cursu* writs); a person seeking a prohibition might often be a trifle embarrassed to characterize certain actions according to the set forms of the writs, and his adversary might have very little trouble in proving subsequently before the king's court that the original action was not truly what the formalist language of the writs called it.

In any case, it is important to observe here that in contesting the nature ascribed to the original action in court christian, the argument is less one of principle than of fact or interpretation. The point at issue is not who has jurisdiction over lay chattels, for instance, but rather, are these lay chattels or not? Or if it be land, one party sues a writ of prohibition against a plea of lay fee in court christian; his adversary does not question the exclusive right of the secular courts to hold such pleas, but maintains perhaps that the land is church property which makes it of admittedly ecclesiastical jurisdiction. The dispute here is not over the respective rights of the two forums, but over a simple question of fact: lay fee or church land? It will be helpful to examine at some length a variety of such cases and responses, considering them in three large groups, according as the writ of prohibition represents them as *lay fee*, *lay chattels* or *advowson*.

Where the writ and the plaintiff's count have spoken of a plea of lay fee in court christian, the commonest answer on the part of the defendant is that the land involved is in reality frankalmoin. In this case it is not difficult to determine on which side the truth lies. Since the Constitutions of Clarendon (1164), there was a juridical means of settling such a question, namely the enquiry or assize which comes to be known as the assize *Utrum*. On the result of this investigation will depend the final decision in the king's court as to whether the writ of prohibition has a place.[72] If the land is found to be frankalmoin, the case is sent back into the ecclesiastical court which is recognized, for the first part of the thirteenth century at least, as the only one competent in such matters.[73] Other proofs than the assize *Utrum* are, however, admissible. The charter of donation of the land will suffice, if it states that the land is given in free alms.[74] Or here, as elsewhere, proof by wager of law is sometimes offered and accepted.[75]

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[71] See above p. 237.

[72] The plea is interrupted while the assize is held. The record in the roll will therefore end as follows: 'Et Ricardus similiter ponit se super jurata. Et ideo fiat jurata et veniat in octavis Sancti Michaelis ad recognoscendum utrum pratum predictum sit laicum feodum ipsius Ricardi an elemosina pertinens fuerit ad ecclesiam ipsius Henrici de Clivelande' (KB 26/74 m. 9d; an. 1220).

The defence against the original action's being considered as one of lay fee may be based on a different argument than that of frankalmoin. It may be that the action was not about the land at all but merely about the tithes due from that land, and therefore a purely ecclesiastical affair.[76] Again the defendant may offer convincing documentary evidence,[77] or may resort to a wager of law; or the proof may come through a jury, if the dispute turns on some related point of fact such as whether the land on which tithes are claimed actually lies in the parish of the person claiming them or not.[78] Or it may happen occasionally that no proof will be required, the plaintiff admitting at once that the true facts of the case are as stated by the defendant in his reply.[79]

On the other hand, it will be useless for the defendant to invoke the argument that there is breach of faith involved, as long as the dispute is over lands and tenements; for the royal authority refuses to admit that any oath (*fides data* or *fidei interpositio*) can remove a case about real property from its jurisdiction. Hence a prohibition holds against a plea of lay fee in court christian even though the parties may have previously sealed their agreement or contract by an oath.[80] The same jealous clinging to exclusive competence in all that pertains to immovables is the reason likewise for refusing to consider the exception that the plea was of ecclesiastical jurisdiction because of land held in testamentary wardship; the competence of the church courts in matter of wills is readily acknowledged by the secular power when the question is of chattels only, not lands or tenements.[81]

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[73] *Curia Regis Rolls*, IV, 291 (Mich. 1206); cf. case cited in the next note. By the middle of the thirteenth century, the jurisprudence has changed; the contrast to lay fee is no longer frankalmoin, but only consecrated soil (see references in previous article, *Med. Studies*, VI, 1944, 274).

[74] The Master of the Hospital of St. Mary Magdalene at Hereford maintains in a plea of 1220 that the ecclesiastical action was not for lay fee, but for a gift made in alms to the aforementioned hospital by the father of the plaintiff. The proof by charter is categorical: 'Et inde profert cartam patris sui idem testantem. Et Willelmus hoc non potuit dedicere. Et ideo magister eat inde sine die, et Willelmus in misericordia. Et magister sequatur in curia christianitatis si voluerit' (KB 26/77 m. 28d).

[75] *Bracton's Note Book*, III, 98, n° 1073 (Easter 1225).

[76] KB 26/77 m. 14d (Mich. 1220).

[77] KB 26/92 m. 8d (Mich. 1225): 'Et Robertus venit et defendit contra eum et contra sectam suam quod nunquam traxit eum in placitum nisi de decimis minutis et candelis et hujusmodi; et inde profert literas domini pape et editionem suam. Et Willelmus non potest hoc dedicere.' The writ of prohibition had been *de laico feodo*.

[78] KB 26/121 m. 5 (Mich. 1240), publ. in *Placitorum Abbreviatio*, p. 106-107. When the jury returns that the meadow in question is not within the parish of the defendant, judgment is given in favour of the plaintiff. In another case of a somewhat different nature (Hil. 1233), the question of the competent court is likewise decided by the decision of a jury on a very simple point of fact. The case is an intriguing one. The defendant is accused of having sued in court christian a plea about a certain ash grove standing on the lay fee of the plaintiff; hence a prohibition *de laico feodo*. In his reply, the defendant asserts that the trees stand in the cemetery of his chapel; cutting them down and carrying them off constitutes therefore a sacrilege; and it was for this he had sued a plea in the spiritual court. A jury is summoned to determine whether the disputed trees did belong to the defendant's chapel or not. Their answer is in the affirmative. 'Et ideo consideratum est quod predictus Petrus licite procedat in curia christianitatis quia illud placitum non pertinet ad coronam et dignitatem domini regis' (KB 26/163 m. 8; the membrane is eaten away at the bottom and we should not have the end of this very interesting case, had not Bracton preserved it for us in his *Note Book*, II, 576-577, n° 755).

[79] KB 26/92 m. 17 (Mich. 1225); this case is cited below p. 265, n. 15.

[80] The annotator in the *Note Book* states this formally: 'Nota quod prohibicio locum tenet de fidei lesione propter laicum feodum' (II, 47); cf. Bracton, *De Legibus*, IV, 265. Cases in the plea rolls show the same principle applied in practice from quite early in the thirteenth century: KB 26/74 m. 26 (Trin. 1220), KB 26/77 m. 26 (Mich. 1220). Nevertheless, the rule may have been less rigorous some years previously. There is, at any rate, a case of 1201 where the defendant advances the fact of breach of faith to justify his having sued a plea about land in court christian; his adversary had failed to keep his part in a bargain of exchange. The king's court remands the case to give the two parties the opportunity of settling it between themselves, but adds explicitly: 'Et interim remaneat placitum in curia christianitatis' (*Curia Regis Rolls*, I, 405).

In all these answers so far, it is easy to see how there could well be a difference of opinion on whether the question was one of lay fee or not. At other times, however, the divergence between the story of the plaintiff and the reply of the defendant is so great that one is at a loss to explain how the plaintiff could ever have thought of suing a writ which calls lay fee a thing which is very evidently nothing of the sort. There is, for example, the case of a cleric who accuses his adversary in court christian of defamation in connection with a homicide; and the adversary sues a prohibition *de laico feodo* against this action.[82] Another party sues a similar writ against an action for eighty marks promised in dowry; the royal justices immediately recognize such an action as one of matrimonial chattels and instruct the ecclesiastical judges to proceed.[83]

Coming to the second of the chief types of prohibition, that against a plea for chattels or debts non-matrimonial and non-testamentary, the answers of defendants follow somewhat the same general lines as those just considered for lay fee. They will say that the ecclesiastical action was not at all as represented by the plaintiff, but was for tithes,[84] or for offerings, oblations or laudable customs,[85] all of which come under ecclesiastical jurisdiction. Or, while admitting that the things are by their nature chattels, they will point out that they are connected with testament or marriage,[86] or they have been seized in a church or cemetery[87] (which constitutes a sacrilege), or taken violently from a cleric.[88]

Here, as elsewhere, the attempt to make breach of faith alone prevail as grounds for having sued a plea in court christian fails regularly; this exception is not admitted as long as the chattels were purely lay in character.[89] The same applies to the excuse that the parties had agreed beforehand to take any eventual dispute before ecclesiastical judges rather than before the king's court.[90]

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[81] 'Et Hugo venit et defendit quod non traxit eum in placitum de aliquo laico feodo, sed dicit et cognoscit quod trahit eum in placitum de custodia terre seminate. Et quia hujusmodi placitum non pertinet ad curiam christianitatis, prohibitum est ei ne illud sequatur; sed implacitet eum si voluerit de bobus, vaccis et aliis ustensilibus domorum' (KB 26/104 m. 9; Hil. 1230). A case on m. 10 of the same roll makes a similar distinction. A writ of prohibition *de laico feodo* had been issued against a plea for a marsh and certain moneys left by will; the defendant proves that there was no question of a marsh, but of the moneys only; hence the decision: 'Et ideo . . . de denariis sequatur si velit.'

[82] KB 26/104 m. 4 (Hil. 1230): 'Robertus venit et defendit quod numquam post prohibitionem tenuit placitum de laico feodo ipsius Hamonis nec ante nec tenebit. Sed dicit quod revera tenuit quoddam placitum de injuriis factis cuidam J. capellano qui de eodem Hamone querebatur quod diffamavit eum de quodam homicidio. Et episcopus presens est et hoc idem cognoscit, et dicit quod non permittet quod idem capellanus eum inplacitet contra prohibitionem domini regis.'

[83] KB 26/107 m. 6d (Mich. 1230), publ. in *Bracton's Note Book*, II. 354, n° 442.

[84] See the pleas published on pp. 283-284; also *Bracton's Note Book*, II, 244, n° 293 (1228); KB 26/123 m. 20d (1242); CP 40/34 m. 16d (1280); *Assise Roll* 486 m. 50d (Lincs 1281); CP 40/58 m. 26 (1285): 'nunquam aliquod placitum . . . de laicis catallis . . . immo de decimis tantum.'

[85] 'Immo dicit . . . de oblationibus et decimis et non de aliquibus laicis catallis' (KB 26/135 m. 19: Mich. 1249). 'Nullum placitum nisi de oblationibus debitis predicte ecclesie' (KB 26/143 m. 11: Mich. 1250). 'De tribus denariis annuis ratione cujusdam exactionis qui fit in partibus illis et semper solet fieri ad opus domini pape; et dicit quod denarii illi vocantur denarii Sancti Petri' (KB 26/139 m. 20; Easter 1250). 'Per censuram ecclesiasticam ipsos compulserunt ad predictum panem (benedictum) prestandum; et petunt judicium si debeat eis de predicto placito in curia regis respondere' (CP 40/60 m. 50d, Mich. 1285; this case is published in appendix, p. 288 no. X).

[86] These cases abound; the one published in appendix p. 286 no. VII is typical.

[87] *Bracton's Note Book*, II, 46, n° 48 (1219); III, 375, n° 1423 (1220).

[88] *Ibid.*, II, 112 n° 130 (1222); cf. Bracton, *De Legibus*, IV, 266.

[89] *Bracton's Note Book*, III, 335 n° 1361 (1220); II, 516, n° 670 (1232); *Assise Roll* 573 m. 105 (1285).

The replies made by defendants accused of having sued a plea of advowson contrary to a prohibition are less varied than those of the two previous classes. As a rule, the defence is that the plea in court christian was one of tithes only.[91] This may not always be accepted as a valid exception, because very early a plea involving all the tithes, offerings, etc. of a church, and then involving even a considerable portion of them, was assimilated to a plea of advowson, for, although it did not bear directly thereon, it did materially affect the value of a living and consequently of the patron's right to present.[92] As this view becomes fixed in the jurisprudence of the time and accepted somewhat unwillingly by the Church, the defendant will have to show that less than one-sixth of the tithes are in dispute. Or, of course, his reply may be of a quite different nature; he may claim that the tithes do not belong to the church mentioned in the writ, but to some other, most frequently to the church of the defendant himself.[93] Or again, he may assert that he is not suing for tithes belonging to a certain church, but for a payment which by long-standing custom he has always received from the incumbent of that church and which affects in no way the right of presentation.[94]

All the varied facts of the many possible replies on the part of the defendant, which have here been passed in review, and which, without flatly denying the plaintiff's affirmation, prove it to be substantially false by adducing certain particular circumstances, would be considered as 'exceptions' in the English procedure of the mid-thirteenth century, although they hardly would be in the Roman and canonical acceptation of that term. They often touch the very heart of the plaintiff's case, and are far more than mere preliminary objections. Maitland explains that, while procedure in England thought it was borrowing from Romano-canonical notions on *exceptiones*, the term came to have for the mediaeval lawyer a much wider application, so that almost every kind of answer was an 'exception'.[95] In fact, the word *excepcioun* is used quite commonly in the time of Edward I to stand for the first utterance of the defendant.[96] The 'exception' therefore, instead of being merely preliminary or marginal, is an integral part of the pleading of the English courts, which consists of this answer of the defendant, the retort of the plaintiff to the exception made, the further answer of the defendant to this, and so on, until a precise 'issue' has been reached, the proving of which or failure to prove which will lead to a final judgment in the case.

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[90] In 1231, a defendant attempts to justify the plea he was suing in court christian because 'de communi consensu tam ipsius Simonis (*plaintiff*) quam Willelmi (*defendant*) compromiserunt se in arbitros et ex utraque renunciatum fuit fori privilegio; et inde profert literas patentes ipsius Simonis que hoc testantur.' The defendant is dismissed *sine die* because he had stopped as soon as the prohibition was received; but the judges are careful to renew the prohibition and make it final, thereby showing that the renunciation had no value in their eyes (*Bracton's Note Book*, II, 499, n° 649); cf. case cited above p. 257, n. 63.

[91] *Curia Regis Rolls*, IV, 198 (1206).

[92] One of the defendants in a case of 1224 puts it well: 'Nichil pertinet ad capellam illam nisi ille decime, et ita si amitteret decimas, per consequens amitteret illam advocationem' (*Placitorum Abbreviatio*, p. 101, rot. 8, cf. rot. 7). Bracton has a note to this same effect in the *Note Book* (II, 360-361, n° 453): 'Nota quod qui sequitur de decimis et oblationibus per consequens sequitur de advocatione;' cf. *De Legibus*, IV, 253 and further references in *Med. Studies*, VI, 1944, pp. 275-276.

[93] KB 26/139 m. 5 (1250); KB 26/141 m. 12 (1250). Cf. *Assise Roll* 777 m. 27 (*Somersetshire Pleas*, I, 379-380; an. 1248-1249), where the defendant points out that the plaintiff cannot possibly have the advowson of the chapel in question, since the defendant himself, or his church, has the right to all the tithes of that chapel; whence the plaintiff cannot therefore very well be the patron.

[94] *Bracton's Note Book*, II, 360, n° 453 (1230). The prohibition against the ecclesiastical action is, nevertheless, maintained, the court seeming to group this payment with tithes and other offerings.

[95] Pollock and Maitland, *Hist. of Engl. Law*, II, 611-615.

[96] *Ibid.*, 614, n. 1.

In the pleading relative to prohibitions, for the thirteenth century at least, long debates with several answers from both parties are comparatively rare. Indeed a large majority of cases go no further than the first reply of the defendant, judgment being rendered immediately if peremptory proof has been given, or judgment being deferred until the next term to allow proof to be brought at that date. There are, nevertheless, examples of pleading of greater length; those where the defendant's reply is met by at least one rejoinder on the plaintiff's part constitute most of them.

These rejoinders and further retorts are not unlike the exception of the defendant in nature; their general tone is that of an exception to the exception put forward. Thus, for instance, when the defendant denies that the plea in court christian was for lay chattels alleging a sacrilege in so far as objects belonging to a church were carried off, the plaintiff recalls that this happened, however, in time of war and ought therefore to be of the king's jurisdiction.[97] In another case the defendant claims that the money for which he is accused of suing a plea in court christian is *ex testamento*, having been owed to him by a man who has just died; but, point out the plaintiffs, the debt in question was never acknowledged by this man before his death, nor does his will make any mention of it; it can therefore hardly be sought as *ex testamento*.[98] To a defendant's exception which says the chattels demanded had been sacrilegiously removed from a church, the plaintiff answers that he has nevertheless offered to make restitution but that his adversary has refused to accept it.[99] A parson, defending the action he pleaded in court christian, says that he was seeking payment of the tithe due on a certain meadow in his parish; the plaintiff asserts, however, that the particular meadow does not lie within the limits of that parish.[100] Still another parson would justify the plea he sued before ecclesiastical judges against a parishioner on the ground that it was question of an offering owed by long-standing custom; but the plaintiff is not slow to point out that, if such an offering is made, it is purely voluntary and not of strict obligation.[1]

Just as the plaintiff had to be ready to prove his count and had even to make an offer to do so as soon as his tale was completed,[2] and just as the defendant had to offer at once to prove if he contented himself with a flat denial of the count,[3] so too each exception of the defendant and each rejoinder of his adversary has to be accompanied by an offer of proof, although the actual proof may not be required right at that moment. In fact, it is on the requiring of proof that the whole case will rest, for, once the burden of proof has been allotted, the final judgment will follow necessarily and be rendered according as the party of whom it is required makes or fails to make the proof he has undertaken. More of this will be seen presently; meanwhile, before touching the question of proofs, something must be said of another sort of exception, an exception more closely allied to that of the Romano-canonical procedure. It is the exception brought forward by the defendant that the plaintiff is excommunicate, wherefore one cannot be obliged to answer him.

The exception against his adversary as excommunicate must be made by the defendant at the very beginning of his reply. His mere word to this effect is insufficient; he is required to give solid evidence by presenting a letter from the ordinary of the diocese attesting the fact,[4] and this letter will be mentioned by the scribe in the minutes of the court along with the mention of the exception advanced.[5] Theoretically this exception is decisive, for, according to the general rule, no person under a sentence of excommunication may sue a plea in the king's court.[6] It has been seen, however, that in actual fact the king makes certain reservations concerning the legal incapacity of excommunicates, especially in those cases where the sentence has been pronounced for the express purpose of preventing a party from suing a plea of prohibition in the royal courts.[7] The latter procedure is looked upon as a mere subterfuge and, as such, invalid; hence an annotation in *Bracton's Note Book* states as an axiom that, in the case of an exception against an excommunicate, it is important to know whether he has been excommunicated by, or through the efforts of, the person who is suing the plea against him, or by another.[8] The distinction is not an idle one, for the practice shows that excommunication by one's adversary does not incapacitate one for further action in the secular courts.[9] In his treatise Bracton states specifically that, if the excommunication is because of a prohibition, the plaintiff has only to adduce this fact with proof of the same in order to have the exception of excommunication disallowed.[10] As the thirteenth century advances, it is usually the excommunicate himself who acquaints the court with the fact of his excommunication; indeed part of his complaint is that he has not only been impleaded contrary to a prohibition, but has been excommunicated as well. Nor does his opponent then put this fact forward as an exception, since he well knows that the court will give it no consideration.[11]

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[97] *Bracton's Note Book*, II, 112, n° 130 (1222). The defendant insists that it happened before the war (i.e. the invasion of Prince Louis of France and the troubles of the end of John's reign). A jury is to pronounce on this point, so that the plea in court christian will have been justified if the act was committed in time of peace, but on the contrary, if in time of war.

[98] *Ibid.*, II, 132 (1222).

[99] KB 26/111 m. 20d (1231). The king's court decides that the plaintiff is to restore the goods taken as he has offered to do, and the defendant is once more forbidden to sue his plea in court christian.

[100] KB 26/121 m. 5 (1240), publ. in *Placitorum Abbreviatio*, pp. 106-107. A jury confirms the plaintiff's contention.

[1] Prynne, *Records*, III, 120-121 (1262-1263).

[2] Above p. 254.

[3] Above p. 256.

Besides these cases where the excommunication is regarded by the king's justices as deliberately intended to defraud their court, there appear others on the rolls where the plea is continued in spite of the exception of excommunication proposed, without any explanation being given for this departure from the general rule.[12] Such cases seem to be abnormal; it is quite possible that the account of them is incomplete, and that the reason for not admitting the exception has for some cause failed to be enrolled. The general rule concerning the exception of excommunication does remain that, when a sentence of excommunication has been fairly pronounced against any person, this person cannot act as plaintiff in the secular courts; should he attempt to do so, it suffices to prove the excommunication in order to have the case adjourned until he obtains absolution.[13]

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[4] 'Qui autem hujusmodi exceptionem opposuerit, oportebit eum habere probationem quia simplici voci tenentis non erit fides adhibenda; . . . oportebit eum qui excipit in hoc casu habere litteras ordinarii, sicut archiepiscopi, episcopi vel alterius judicis ordinarii vel delegati, rei veritatem testificantes' (Bracton, *De Legibus*, IV, 326). The ordinary may attest orally if he is present (*ibid.*).

[5] In a few rare cases, the letter itself is enrolled in the minute, as in the following one from KB 26/92 m. 19 (1225): 'Et Phillipus venit et dicit quod non debet eidem Johanni vel attornato suo respondere quia ipse excommunicatus est; et inde profert literas domini archiepiscopi Eboracensis patentes que hoc testantur in hec verba: W. (*Walter Gray*) Dei gratia . . . Sciatis quod Abbas de Kokessand, et de Kokessand et de Kokesham priores denunciaverunt nobis se nobilem virum Johannem filium Roberti auctoritate domini pape vinculo excommunicationis innodasse, mandantes ut ipsum talem denunciaremus; quod vobis ad instanciam magistri Philippi latoris presentium significamus ut super hoc certitudinem habeatis. Valete. Datum etc.' The case is found in *Bracton's Note Book*, III, 526, n° 1680, but the archbishop's letter has been omitted.

[6] 'Excommunicato enim interdicitur omnis actus legitimus, ita quod agere non potest nec aliquem convenire' (Bracton, *De Legibus*, IV, 326).

[7] See above pp. 245-246.

[8] 'Refert utrum ille qui implacitatur eum excommunicaverit vel hoc procuraverit an alius' (II, 428, n° 552).

[9] In a case from the Trinity term 1220, a certain Richard the Scot to whom the fact of excommunication by the bishop has been objected replies 'quod hoc non debet ei nocere, quia idem episcopus est adversarius ejus in eadem loquela etc.' and the plea in the king's court goes right on without interruption (*Bracton's Note Book*, III, 358 n° 1403). Similarly, in 1241, an attorney, who is said by his adversary Adam to have been excommunicated, points out 'quod, si est excommunicatus, hoc fecit ad impetrationem predicti Ade et post prohibitionem domini regis;' and the exception is not admitted, even though Adam goes on to try and show that the motive of the excommunication was not the plea in question (*Placitorum Abbreviatio*, p. 108).

[10] *De Legibus*, IV, 326-327.

[11] An excommunication pronounced or procured after a prohibition would aggravate the accusation against the defendant and allow the plaintiff to make a claim for greater damages. In the second half of the thirteenth century, mention of excommunication as well as a plea against a prohibition becomes, if not the rule. at least the most usual case. Thus, in 1250, out of 18 pleas of prohibition, 7 mention it; in 1260, 9 out of 14; in 1280, 7 out of 11; in 1285, 5 out of 10.

C. *Proof*

Many times already mention has been made of the proof to be given of facts adduced in pleading. Documentary evidence, wager of law and jury have all been alluded to. It will therefore be useful to devote a section at this point to the question of proof and the various ways of proving, with particular reference, of course, to pleas of prohibition.

In some rare cases, formal proof may be altogether unnecessary. The mere exposition of the facts may lead at once to a judgment, as when, for instance, the plaintiff's own count makes it manifest that his plea of prohibition was quite unfounded;[14] or again, when the plaintiff readily acknowledges,[15] or is unable to deny,[16] the truth of the defendant's answer to the count, or simply withdraws his plea.[17] These latter cases are slightly mystifying; why should a plaintiff go to the expense and trouble of suing a prohibition and a plea against his adversary only to concede everything as soon as the parties come before the king's justices? The explanation may perhaps be that the parties have meanwhile settled the affair out of court and are going through the formality of a court plea as the quickest way of terminating the action already begun. This would be, to all intents and purposes, equivalent to the not infrequent case of the parties paying for the privilege of settling their dispute privately (*licentia concordandi*).[18] At any rate, all the foregoing examples preclude the need of furnishing proof.

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[12] In the minute of the case cited above (p. 264, n. 5), from which the Archbishop of York's letter of excommunication is taken, the scribe goes on immediately to enrol the replies of the two parties, almost as though this formal proof of the fact of excommunication had meant nothing. Or has he simply forgotten to put in the fact that the person has since been absolved?

[13] *Bracton's Note Book*, III, 349, n° 1388 (1220); II, 428, n° 552 (1231); KB 26/139 m. 22 (1250). The following example is taken from KB 26/123 m. 9d (1242): 'Et prior venit et deffendit vim et injuriam etc. . . . et dicit quod non debet eis ad hoc respondere quia ipsi sunt excommunicati, et profert litteras domini Norwicensis patentes que hoc testantur. Et ideo prior inde sine die quousque absolantur (*sic*) et donec discutiatur utrum illi qui sequuntur predictum placitum coram eodem priore licite possint sequi placitum illud vel non etc. Et prohibitum est eidem priori quod interim non teneat predictum placitum etc.' The plea had to do with six acres of land and fifteen solidi.

A case of the year 1277 shows clearly how effective the exception of excommunication against one's adversary can be: a certain chaplain impleads two men who are said to have laid violent hands on him and imprisoned him; they decline to answer him, since he is excommunicate, and they produce letters of the Bishop of Norwich to this effect, whereupon the chaplain is ordered to seek absolution before he can continue to sue his plea. Later he comes a second time, saying that he has a new writ against the same defendants, and a second time he is told to get himself absolved before any action can be taken (KB 27/33 m. 10d).

[14] See the case cited above p. 253, n. 40.

[15] In the following case, the prior has been impleaded by a certain Walter for hearing a plea of lay fee and chattels in court christian: 'Et prior venit et bene cognoscit quod trahit eum in placitum in curia christianitatis de decimis feni et molendini et de quinque marcis ei adjudicatis pro expensis suis. Et Walterus hoc cognoscit. Et ideo prior inde est quietus et Walterus in misericordia' (KB 26/92 m. 17; an. 1225). For similar cases: KB 26/106 m. 7d (1230); KB 26/107 m. 6 (1230).

[16] When Thomas, the plaintiff, speaks of lay fee, the ecclesiastical judges reply that it was question of a crop left by will; 'et Thomas non potuit hoc dedicere; et ideo judices inde quieti, et Thomas in misericordia' (*Bracton's Note Book*, II, 178 n° 424; II, 422, n° 544; *Somersetshire Pleas*. I, 387 n° 1418; *Curia Regis Rolls*, VIII, 315; KB 26/139 m. 20 (cited above p. 261, n. 85; the plaintiff cannot deny that the plea in court christian was for Peter's Pence).

[17] KB 26/171 m. 15d (1261): William, the ecclesiastical judge, had already wagered his law to prove that he did not hear a plea after the writ of prohibition, when the plaintiffs 'venerunt . . . et retraxerunt se de predicto placito; ideo predictus Willelmus inde quietus, et Galfridus et Jacobus et plegii sui de prosequendo in misericordia.' In *Assise Roll* 486 m. 50d (Lincs, 1281) is another case, where the plaintiff withdraws his plea after a jury has been convoked to examine the truth of the

The more usual case, however, is that where the count, the denial, the exception, or some further fact adduced has to be proved. Documentary evidence is the most peremptory: a charter, a letter or a will witnessing to the true nature of the matter in question, or the minutes of a recognized court, ecclesiastical or secular, recording a plea which is disputed, will be accepted as irrefutable proof and determine the case quite as summarily as open admission on the part of one of the parties.[19] One is not always so fortunate, however, as to have such categorical proof at hand; and, since each statement of plaintiff and defendant must be accompanied with an offer of proof, and actually proven if so required, other modes of proof are employed.

The allotting of the proof is of great importance in English procedure. Not only does it mark the turning point in each plea, but it is really the only stage at which the justices make a judgment according to their own personal opinion, for, once they have allotted the proof, the final decision will follow necessarily according as the proof is given or not given. That is why the allotting of the proof is called a 'medial judgment'. The mediaeval judges do not weigh the conflicting evidence on the two sides; they hear the statement of each party, as well as the exceptions and further replies until the affirmation of one is met by a straight denial from the other. It is the purpose of the pleading to reach a point like this, called an 'issue', whenever the first response of the defendant is not a direct negation of the plaintiff's count. Then it becomes the duty of the justices to put one of the parties to the proof. This is really a test he is put to rather than proof as understood in modern practice. If he accomplishes what is required of him by way of proof, he will win his case; if he fails, his adversary will *ipso facto* be victorious.[20]

It is, as a general rule, the defendant who has to prove.[21] Modes of proof have varied a good deal. By the beginning of the thirteenth century, however, certain ones are already disappearing or being restricted to particular cases. The ordeal is the first to go. The judicial combat likewise loses favour and, although legal until the nineteenth century, it is limited as early as Henry III's

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defendant's statement; 'et ideo committatur gaole' (this is often merely the occasion of a money payment and not an actual jail sentence; cf. p. 280).

[18] See below p. 278.

[19] In 1242, the prior of Hayling produces charters of donations made by William the Conqueror and Henry II, and a charter of the Bishop of Winchester confirming the same, to prove the rights of his priory to the church of Hayling and all its tithes (KB 26/124 m. 27d; published p. 284). In 1243, the prior of Bermondsey offers as proof the charter of donation of a dead benefactor along with the judgment rendered previously in his favour by judges delegated by the Holy See (KB 26/127 m. 16d). In a case of 1225 papal letters are presented in proof (KB 26/92 m. 8d). In 1242, it is the last will of the defunct which settles a dispute (KB 26/141 m. 23d). At other times, a recent decision in an assize of novel disseisin (KB 26/130 m. 13d) or the *editio* or *acta* of an ecclesiastical court are brought in to prove the true nature of the pleas being heard in that court (KB 26/120 m. 23; KB 26/109 m. 18d).

As to the documentary proof required of excommunication, it is sufficient to refer to what has been said already, p. 264.

[20] Pollock and Maitland, *History of English Law*, II, 563, 602-603, 670-671; cf. M. M. Bigelow, *History of Procedure in England* (London, 1880), pp. 288 ff.

[21] Pollock and Maitland, *op. cit.*, II, 603; cf. 634, n. 3.

reign to the Appeal of Felony and to the Writ of Right (plaintiff only[22]). Glanvill still bears witness to the older modes of proof; but little is heard of them in Bracton. In pleas of prohibition, there seems to be no trace at all of their use. The sole modes of proof to which parties are put are the wager of law and the jury, along with the ancestors of this latter, the petty and grand assizes. Ordinarily, when one party offers to defend or prove *sicut curia consideraverit,* he is required to wager and make his law. In the latter part of the thirteenth century, recourse to the decision of a jury becomes popular; the party *ponit se super patriam,* whereupon a jury of men from the neighborhood (*de visneto*) is summoned.

The wager of law is the promise or guarantee to come and swear personally to the truth of what one has said and to support this oath with the oaths of oath-helpers (*compurgatores*), who will swear that they believe he has spoken the truth. According to the evidence of the plea rolls, it appears as the mode of proof used exclusively, until the time of Edward I, to prove a flat denial of having proceeded in court christian contrary to a prohibition. In this case, where the defence is simple and straightforward, proof through a jury is very slow to replace proof by oath with oath-helpers.[23] The role of the jury during the first half and more of the thirteenth century is restricted to proving some fact connected with the main issue, or some exception about which the main issue will turn; and even in these latter cases the wager of law still encroaches as late as 1286,[24] although by that time the use of the jury to decide the truth of a concrete fact adduced in connection with the trial is almost universal. Indeed, encroachment and replacement are decidedly in this direction rather than in the other; it is the jury which in the latter half of the thirteenth century crowds out the wager of law in all pleas of prohibition, just as it has done long before in pleas relating to other matters.[25]

The manner of wagering law in pleas of prohibition is not different from that in other pleas: the defendant (or, it may be, the plaintiff), having offered to prove, is told to come on a specified day with his oath-helpers and he presents pledges who guarantee that he and his helpers will be in court on the day appointed. These facts are enrolled with monotonous regularity in the minutes of the plea rolls.[26] The pledges, generally two in number, although there may be more, must be found on the spot; in other words, the litigant has them already at hand.[27]

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[22] It is interesting to note, as late as 1260, that even ecclesiastics have recourse to trial by battle to decide a case relating to property. William Button, bishop of Bath and Wells (1248-1264), rejects (*defendere*) the pretention of Roger Ford, abbot of Glastonbury (1253-1261), to certain manors; he offers to prove his defence *per corpus cujusdam hominis sui,* while the abbot proposes to prove him wrong (*disrationare*) by the same method (KB 26/165 m. 36d). In regard to these different questions see Thayer, 'The Older Modes of Trial,' *Harvard Law Review,* V (1892) 45-70.

[23] A case of the year 1231 illustrates the preeminence given to wager of law as proof where a flat denial is made. Fifteen acres of land are in dispute. The defendant denies having proceeded in court christian after the prohibition; as to the land, he adds, it had come to him from the plaintiff as dowry when he married the daughter of the latter, and it was not the object of the plea. The plaintiff replies, in his turn, that he had never given the defendant either his daughter or the land; his daughter had been carried off by the defendant, while the land had been obtained as a result of distraint by an ecclesiastical court which had turned it over to the said defendant. Both parties wish to 'put themselves on the country' by way of proof, that is, to have a jury summoned. But, the king's justices observe, the woman in question is not a party to the action; they decline, therefore, to try the issue about land and restrict themselves to that of the violation of a prohibition. And when they enjoin proof concerning the latter, it is not by jury but by the classic wager of law: *vadiet legem se XIIa manu* (*Bracton's Note Book,* II, 478-479, n° 629; cf. note 6 on same page).

[24] *Assise Roll* 572, m. 12 (Norfolk). A widow defends herself in regard to a prohibition against a plea of lay chatels on the ground that the cattle and money involved were in reality her marriage portion, left her by the will of her late husband. This accessory fact, or 'exception,' she is to prove by wager of law.

[25] The continued use, in Bracton's time, of the wager of law as proof in many cases which could easily have been decided by 'the country' is to be explained, says Maitland, by the fact that these actions are older than trial by jury itself and so, still use the older mode of proof to which they have been accustomed (Pollock and Maitland, *Hist. of Engl. Law,* II, 634, especially note 5).

As a rule, a delay is granted until the following judicial term before the law has to be 'made'. There are, nevertheless, examples where one is required to come back within the same term, within a week, or even the next day;[28] and the case is not unknown where the law is 'made' at once without any delay, thanks undoubtedly to the very large suit of witnesses who have accompanied the party to court.[29] The prohibition to the court christian is usually renewed for the time that elapses between wagering and making the law, or, if the matter is clearly secular and only the *post prohibitionem* in dispute, it will be renewed definitively.

On the day appointed, if the defendant (in the case where he has to make proof) does not appear in court and has not essoined himself, judgment will be given against him and he, along with the pledges who guaranteed his appearance, will be amerced, while his adversary will be authorized to collect damages for the injury he has sustained.[30] Should the said defendant have profited by this delay to renew the action in court christian against his adversary, a new summons will be issued requiring him to answer for this new offence.[31] If, on the contrary, the plaintiff fails to appear on the day fixed, the defendant is not obliged to make the law; instead, he is dismissed *sine die*, while the plaintiff and the pledges who stood guarantee for his suing the plea are subject to an amercement.[32] Still another case may arise where the law is not actually made: the plaintiff himself sometimes remits the obligation of making the law after his adversary has undertaken to do so, with the result that the case is dropped.[33]

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[26] The following is a typical enrolment chosen at random from the Michaelmas term of 1250 (KB 26/143 m. 21): 'Et similiter predictus decanus defendit quod non tenuit idem placitum de predictis catallis postquam ei detulerat predictam prohibitionem. Et hoc offerunt defendere contra ipsos et sectam suam sicut curia consideraverit. Et ideo consideratum est quod vadient legem se duodecima manu et veniant cum lege sua in octabas Sancti Hyllarii. Plegii de lege Walterus filius Willelmi de Hasselda et Willelmus de Horset' (The rest of the entry is in a finer hand, crowded later into the space left for this purpose when the first part of the entry was made). 'Ad diem illum venerunt predicti decanus et Walterus et fecerunt legem. Ideo ipsi inde sine die, et Galfridus et Thomas in misericordia.'

It should be noted that, in the time of Bracton, a defendant can neither wager nor make his law through an attorney; his personal presence is always required. See a decision of the justices to this effect in *Bracton's Note Book*, III, 449-450, n° 1566. The plaintiff, on the other hand, is privileged and, if the burden of proof is assigned to him, he may not only wager but also make his law *per attornatum* (*ibid.*, pp. 142-143, n° 1124). The privilege comes to be accorded to the defendant likewise before the end of the thirteenth century; see the case published on p. 288, where a woman who is defendant wagers her law *per attornatum.*

[27] Only one case has come to my notice where a party fails to find pledges: 'venit et defendit et vadiavit legem; et nullum plegium habuit; ideo traditus est gaiole.' He has thereby lost the case (*Curia Regis Rolls*, II, 28, an. 1201).

[28] 'Et veniat die lune . . . Postea ad illum diem venit . . .' (CP 40/60 m. 16d, an. 1285). 'Et veniant cum lege sua cras. Postea in crastino venerunt et fecerunt leges suas' (KB 26/145 m. 51, an. 1251; see also *Somersetshire Pleas*, I, 183, an. 1272; CP 40/9 m. 10, an. 1275; CP 40/32 m. 18d, an. 1280).

[29] 'Ideo consideratum est quod vadiet ei legem se duodecima manu. Et predictus Nicholaus instanter fecit legem suam' (Prynne, *Records*, III, 198-199, an. 1277). Similarly in CP 40/60 m. 85d (1285): 'Magister Johannes incontinenti fecit legem suam.'

[30] Bracton, *De Legibus*, IV, 275; there is no lack of examples in practice: KB 26/111 m. 14 (1232), *Somersetshire Pleas*, I, 348, n° 1325 (1247), KB 26/141 m. 24d (1250), KB 26/199 m. 14 (1270). In 1275, however, occurs what appears to be an isolated example where the defaulter is to be distrained anew to appear at the following term (CP 40/10 m. 23d).

[31] KB 26/141 m. 24d (1250): Gervasius le Cordewanier per attornatum suum optulit se quarto die versus Adam de Ware de placito quare secutus est placitum in curia christianitatis . . . postquam in curia domini regis coram justitiariis nostris apud Westmonasterium vadiavit ei legem quod non secutus fuit idem placitum in eadem curia christianitatis etc.' The attachment is mentioned on the reverse of m. 9a of the same roll. For a similar case see KB 26/145 m. 51 (1251).

[32] CP 40/58 m. 29 (1285); *Assise Roll* 572 m. 12 (Norfolk, 1286). Here, once more, there is no effort on the part of the royal authority to go further into the matter of possible disobedience to a prohibition; the plea ends with the default of the plaintiff.

Normally, however, the party who has wagered his law comes at the time appointed and, with somewhat disconcerting ease and regularity, does make his law; that is to say, he takes an oath to the truth of what he has affirmed in court and has his compurgators swear that they believe he has spoken truly. How many oath-helpers must there be? It is for the court to fix the number. Twelve, however, seems to be almost ritual.[34] Should the party which has to make the law include several persons, each one of these will ordinarily be required to furnish twelve oath-helpers,[35] although this too may depend on the will of the royal justices. No special quality or capacity is required in the compurgators; they do not have to be, for instance, the equal of the defendant either in social rank or ecclesiastical dignity. All that is necessary is that they be trustworthy and of good repute (*fideles et bonae opinionis*). Relatives and friends of the defendant are not excluded; on the contrary, they form perhaps most frequently the body of oath-helpers.[36] The ceremony of swearing the oath takes place normally before the same justices who have specified this mode of proof, but these justices may designate others before whom the oath is to be taken. Thus, the justices at Westminster sometimes fix a forthcoming assize of itinerant justices,[37] probably for the greater convenience of the parties. On the other hand, itinerant justices may order the law to be made at Westminster:[38] this would be perfectly natural if the justices were just finishing their eyre or expected to be at some considerable distance when the next judicial term came around.

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[33] KB 26/120 m. 14d (1239): An ecclesiastical judge, answering for himself and colleague, had already wagered his law when his adversaries 'venerunt et remiserunt ei legem; et ideo prohibitum est . . . ne ammodo teneant placitum illud.' A like case occurs in KB 26/135 m. 17 (1249), cited below p. 279, n. 82.

[34] An ecclesiastical document dating from the year 1280 or thereabouts speaks of a 'law' of only three compurgators. The reference is clearly to the king's court, for it is a complaint that, in certain cases, one is obliged to accept the decision of a jury instead of being permitted to use the common right of making the law with three oath-helpers (. . . nec potest judex coram justitiariis uti jure communi, scilicet de lege facienda cum manu tertia . . ., Raine, *Historical Papers and Letters from Northern Registers*, Rolls Series, London, 1873, p. 71). In no other document have I found an instance of only three compurgators. It is just possible that the scribe who copied this article into the episcopal register may have read *IIIa manu* instead of *XIIa manu* in the original document. There is no question about what this scribe himself has written, for he has spelt out the word, *tercia manu*, as the librarian at York Minster was kind enough to inform me. The possibility of three oath-helpers being sometimes allowed is not to be excluded altogether; Brunner has noted an oath *tercia manu* in use in Germanic countries (*Deutsche Rechtsgeschichte*, vol. II, 2nd ed., Leipzig, 1928, p. 521).

As to the formula *duodecima manu*, does it imply that the defendant himself will be the twelfth to swear, or that he must have twelve in addition to himself? Brunner considers that there was much diversity on this point (*loc. cit.*). The inclusive reckoning would seem to be the older, whereas in the thirteenth century, in London at least, the other reckoning prevailed (Pollock and Maitland, *Hist. of Engl. Law*, II, 601, n. 2). The entries in the plea rolls would lead, however, to the conclusion that the defendant was himself the twelfth. For one thing, the fuller formula, *vadiet legem, se duodecima manu*, which occurs frequently, indicates this (KB 26/143 m. 21, an. 1250; KB 26/152 m. 5, KB 26/154 m. 20d, an. 1254; *Assise Roll* 485 m. 2, an. 1281). Moreover, the mechanical device employed by the court scribe confirms it: in the margin of the roll opposite the entry which records the making of the law is a little figure composed of twelve separate points, made probably as each oath was taken; thus:

. . . .
. . . . or . . . . . or . . . . . .
. . . .   . .

The first example of such a figure that I have noted dates from 1252 (KB 26/147B m. 12d). Very soon, however, it appears with great regularity. The objection can, of course, be raised that this count includes only the oath-helpers and not the defendant. Nevertheless, in view of the naïveté which led the scribe to adopt this mechanical device, it would indeed be surprising if he omitted all indication of what was the chief oath of all, namely that of the defendant.

The only variation from twelve in the number of these dots is in KB 26/160 m. 10d (1258), where only six occur. The number of oath-helpers could therefore be less than twelve.

[35] 'Vadient ei legem unusquisque duodecima manu' (CP 40/33 m. 16, an. 1280). 'Ideo consideratum est quod vadient ei . . . legem suam, quilibet eorum se duodecima manu, et veniant cum legibus suis cras.' The scribe has not failed to mark four figures of twelve points each in the margin opposite the record of the following day's proceedings (CP 40/9 m. 10, an. 1275).

[36] Bracton, *De Legibus*, IV, 275-276.

If the defendant succeeds in making his law, he is victor in the case. He is dismissed *sine die*, while the plaintiff finds himself *in misericordia pro falso clamore*. To be sure, if the defendant has denied only the *post prohibitionem*, the actual prohibition will be renewed to the court christian. This however does not seem to prevent some people from attempting to pursue the same plea once more before the ecclesiastical judges, if we may believe the subsequent complaint of the person who has been cited again to appear before these judges.[39] And yet, when the complaint leads to a plea of prohibition in the king's court, the defendant will make his law once more, and with the same apparent ease, to prove that he has not pursued a plea in court christian since he made his law the first time. Two things are particularly striking in all these proceedings: the ease with which parties succeed in making the law, and the patience with which the authorities continue to allow so inconclusive a mode of proof. Its shortcomings do become evident even to contemporaries; hence it has finally to yield ground before the growing use of a more satisfactory method, that of the jury. In pleas of prohibition, the success of the jury is comparatively late, beginning towards the close of Henry III's reign; it is particularly marked from the first years of Edward I.

In its widest sense the word *jury* means 'a group of neighbours called together by a public officer to answer some question on oath and state the truth concerning it.'[40] This is not the place to go into the details of the origin, history and singular success of the jury in England; the present study is concerned with the jury only in so far as it is used as a mode of proof in pleas relating to prohibitions.[41] A few preliminary remarks, however, will not be out of place to show the stage of development at which the jury had arrived when first it is met with in pleas of prohibition.

Generally considered to be of Frankish origin, the 'jury' or sworn enquiry, in the broad sense indicated above, was brought to England by the Conqueror, although it had been known there previously under the form of the 'jury' of accusation of twelve thanes. Henry II is responsible for the rapid development of the institution in the late twelfth century, when he generalized its use in both administrative and judicial matters. Many of the important measures adopted during his reign came as the result of enquiries made among representative groups of his subjects testifying under oath. In the realm of justice, he instituted the four petty assizes (*Utrum*, *Novel disseisin*, *Mort d'ancestor* and *Darrein presentment*). All four are types of actions where the issue of the trial is made to turn about a single question of fact, and the truth about this fact is learned from the response given by a sworn body of neighbours to a rigorously formulated question put them by the king's justices. This 'jury', or assize[42] as it is usually called, consists of twelve free and lawful men of the district, convoked directly by the sheriff. The distinguishing feature of the four actions is that the 'original writ' of the king orders the convocation of the 'jury' at the same time as the citation of the defendant: the parties find themselves therefore in the presence of the 'jury' from the very beginning of the trial. It is likewise Henry II who gave the country the Grand Assize.[43] This is composed of twelve knights who have been chosen by four other knights, these latter having been previously appointed by the sheriff. It is not convoked except at the request of the defendant, who has the privilege of choosing it in preference to trial by battle whenever his adversary offers the latter in an action of Writ of Right. It is up to the 'jury' to say which of the two parties has the stronger claim or right (*majus jus*) to disputed land. Unlike the petty assizes, which settle only the question of possession or seisin, the Grand Assize determines right of property.

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[37] 'Veniat cum lege in adventu justiciariorum' (KB 26/77 m. 14d, an. 1220); '. . . coram justiciariis ad primam assisam' (KB 26/132 m. 11; an. 1244). This transfer of the ceremony of making the law may even take place without previous mention of it in the roll which records the wager. Thus, in 1280, a defendant wagers his law and a date is set for him to come and make it (CP 40/36 m. 96). The minute recording this is followed in the roll by one of those familiar and provoking blank spaces. However, *Assise Roll* 485 m. 2 informs us that the defendant in question made his law before the itinerant justices at Lincoln. Perhaps we have here the explanation of many of those empty spaces in the plea rolls which interrupt the record of some very interesting cases. It is most unfortunate that the *Assise Rolls* of the itinerant justices are so incomplete for the reign of Henry III. Most of the empty spaces will keep their secret.

[38] 'Et veniat cum lege . . . apud Westmonasterium' (*Assise Roll* 359 m. 11, an. 1241).

[39] KB 26/166 m. 36d (1260); CP 40/9 m. 6 (1275); CP 40/57 m. 35d (1285); this last is published in appendix p. 288. See also KB 26/160 m. 10d (1258) and KB 26/169 m. 71d (1260) for cases where the excommunication also is renewed.

[40] Ch. Petit-Dutaillis, *The Feudal Monarchy in France and England from the Tenth to the Thirteenth Century* (London, 1936), p. 132.

[41] On the origin of juries, the work of Heinrich Brunner, *Die Entstehung des Schwurgerichtes* (Berlin, 1872), is still classic. Pollock and Maitland (*Hist. of Engl. Law*, I, 138-150 and II, 616-632, 649-659) resume the ideas of Brunner. For fuller details on England, J. B. Thayer, *A Preliminary Treatise on Evidence at the Common Law*. Part I. *Development of Trial by Jury* (Boston, 1896).

It will be better to apply the word *assize* to the foregoing types of enquiry under oath and reserve *jury* for the narrower sense of the term which more closely approaches the meaning of the word in present day usage. The jury (*jurata*), in the strict sense, is not convoked until the case before the court is already under way and, as a result of the pleading, an issue has been reached turning about a point of fact, the determination of truth of which both parties are willing to submit to the testimony of the countryside (*se ponere super patriam*). As was the case for the assizes, so too here it is the sheriff who convokes the twelve *juratores* or *recognitores* (the latter term is more common in the first half of the thirteenth century), twelve men *per quos rei veritas melius sciatur*. They must be not only free and lawful but likewise impartial and disinterested, neither enemies nor special friends of either party.[44] This jury, in the more limited sense, will become after a considerable evolution the classic jury of English law. Before the rapid and lasting success of their rival, the assizes will gradually disappear.

The jury is encountered already in the earliest plea rolls of the *Curia Regis* which have to do with cases of prohibition. In a plea of the year 1199, developing out of a prohibition of lay fee, the defendant offers to prove his denial by putting himself on lawful men of the neighborhood.[45] Similarly, in 1201, recourse is again had to such an *inquisitio*.[46] The assizes, however, also play a role in these early records as a mode of enquiry in settling certain questions of fact which arise. Examples are extant for the years 1196,[47] 1205,[48] etc., where the determination of the *majus jus* by a Grand Assize is to settle the issue in a case of prohibition. The assize *Utrum* may also sometimes be the proximate means of deciding whether a given prohibition ought to have a place or not. A case of the year 1220 is typical: the defendant denies a plea of lay fee in court christian, asserting that he had in reality but sought the restitution of a meadow belonging to his church, of which he had been deprived. Both parties are willing to have an assize *Utrum* determine whether the land in question is lay fee or free alms.[49] Evidently the final decision of the justices in the plea of prohibition is going to depend upon the decision of the assize as to the nature of the land. Although the use of a jury and that of the assizes are found side by side in prohibition cases of the first years of the thirteenth century, the records of the 1220's appear to provide the last certain examples of a Grand Assize or an assize *Utrum* being invoked to settle a disputed point in connection with writs of prohibition.[50] Henceforward, all questions that arise in the course of the pleading and which are to be referred to 'the country', are submitted to a jury.[51] The questions are put according to the circumstances peculiar to each case, and no longer according to the rigidly fixed forms of the assizes. Their variety is unlimited: they may bear upon the reality of some alleged happening, upon the exact limits of a certain domain or a certain parish, upon the existence of a right or lawful custom claimed by one of the parties, upon the reality of a promise said to have been made, and upon many other things besides. A few practical examples will help by way of illustration.

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[42] To avoid confusion, let it be noted that the term *assize* is used in the twelfth century in at least four distinct senses: a legislative document, a session of the court, a jury of enquiry, and an action characterized by the use of such a jury of enquiry.

[43] J. H. Round held for its institution at the Great Council of 1179 against the opinion of Stubbs who believed it to have originated during the period of Becket's political activity, 1155-1162 (*Athenaeum* of Jan. 28, 1899).

[44] Bracton observes that the law is more exacting in the admission of jurors than of compurgators (*De Legibus*, IV, 276; cf. above p. 269). A plea of 1280 (CP 40/32 m. 43) mentions specifically that the jurors must be 'not of affinity with either (litigant).'

[45] 'Totum defendit et inde ponit se super legales homines de visneto; . . . et inquisicio mandetur a die Pasche in unum mensem per literas vicecomitis sigillatas' (*Curia Regis Rolls*, I, 103).

[46] *Cur. R. R.*, II, 42.

One defendant denies the charge of having sued a plea of lay chattels in court christian; the action, he says, was one of sacrilege, since his adversary had laid violent hands on him in a cemetery and had there robbed him of ten *solidi*. Both parties agree to let a jury pronounce on the truth of this story. The jury find it to be untrue. Therefore there was no sacrilege and the dispute, being purely secular, ought not to have been taken into an ecclesiastical court. As a result, the defendant loses the case and is amerced.[52] Another defendant, a parson, in denying a plea of lay fee, maintains that he had merely sought to obtain payment of the tithe on a piece of land belonging to his parish. But, replies the plaintiff, the land is not even in his parish; hence he, as parson, could have no right to tithes therein so that the action in court christian really resolved itself into one of lay fee. A jury is then summoned to declare whether the land in question is or is not within the parson's parish. According to their finding, it is not, and the minute of the court makes it quite clear that as a result of this decision the defendant is convicted of transgressing a royal prohibition.[53] The all-important part played by the jury in determining the final judgment is very evident.

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[47] *Cur. R.R.*, I, 21.

[48] *Cur. R. R.*, III, 293: it has been decided that a Grand Assize shall determine 'quis eorum majus jus habeat in illa advocatione. Dies datus est eis in adventu justiciariorum, et habeat abbas breve ad summonendum quatuor (milites) etc. Et prohibitum est abbati quod non trahat eum in causam de illa ecclesia in curia christianitatis interim.'

[49] 'Et ideo fiat jurata et veniat in octabas Sancti Michaelis ad recognoscendum utrum pratum predictum sit laicum feodum ipsius Ricardi an elemosina pertinens ad ecclesiam ipsius Henrici de Clivelande' (KB 26/74 m. 9d; cf. a similar case on m. 17d of the same roll). Note that the word *jurata* still has its wider meaning; the wording of the question makes it evident that it is an assize *Utrum*, yet it is referred to as *jurata*.

[50] I have seen no cases later than the two of the year 1220, cited in the preceding note. As to the particular turn taken by the assize *Utrum*, see F. W. Maitland, 'Frankalmoin in the Twelfth and the Thirteenth Centuries,' *Collected Papers of F. W. Maitland*, ed. H. A. L. Fisher (Cambridge, 1911), II, pp. 205-222. S. E. Thorne has dealt more recently with the topic in general: 'The Assize Utrum and the Canon Law in England,' *Columbia Law Review*, XXXIII (1933) 427-435.

[51] It has been seen above, however, that the great majority of cases at this time do not go to the 'country' at all, but are proven by wager of law (pp. 267-270). This early success is merely over the assizes.

[52] *Bracton's Note Book*, III, 375 n° 1423. In a parallel case (II, 576, n° 755), the jury's decision shows that this time there was sacrilege, and so the justices send the case back to the ecclesiastical court.

In a plea of the year 1260, the dispute between the parties really turns upon the true nature of certain chattels. According to the plaintiff they are lay and his adversary has been trying unjustly to take them from him by means of an ecclesiastical action. The defendant, on the other hand, states that they are matrimonial in character, having been promised to him when he married the daughter of the aforesaid plaintiff; he is ungallant enough to add that without such a promise he would never have taken the young lady as his wife. It is up to a jury to say which party is right as to the true nature of the chattels, and this in turn will show what was the true nature of the original plea in court christian.[54]

The same plea roll for 1260 presents us with another slightly different case. The defendant has already made his law to prove that he did not proceed in court christian contrary to a writ of prohibition; but, instead of having his adversary absolved, as had been enjoined upon him by the court, he has had him denounced publicly and made his position unbearable, all of which, the plaintiff claims, is a violation of the final prohibition with which the earlier plea had been closed. The defendant, however, denies all the charges against him, and he would have the matter referred to a jury.[55] An important difference between this and the preceding cases should here be noted. This time the jury is going to answer directly about the very substance of the plea, not merely about some circumstance more or less extraneous upon which the main issue will turn. And this brings us to a new phase in the history of the role of the jury as mode of proof in cases of prohibition, namely, that where the jury reports purely and simply on the central issue of whether the defendant sued a plea in court christian contrary to a writ of prohibition or not. In other words, it comes to be used to prove a flat denial.

The first clear case of offering to prove by jury a simple, flat denial of the plaintiff's count, without any pleading, is from the beginning of Edward I's reign, about 1275.[56] The question put to the jury in this case, as it is recorded by the court scribe, bears specifically on: *si post prohibitionem . . . vel non.*[57] When compared with the type of question put to a jury in the middle of the century,[58] the difference between the two stands out clearly, for in the latter case no mention of the prohibition was made, the jury being charged to report on a point quite distinct from this. When this stage is reached where the jury's finding is to bear on the very core of the problem at issue and no longer on some relatively extraneous fact, then proof by jury is challenging the older wager of law on the ground where it had held exclusive sway.[59]

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[53] 'Et quia predictus Thomas gratis se posuit in inquisicionem istam, et per eandem inquisicionem convictum est quod ipse Thomas secutus est placitum curie christianitatis de laico feodo . . . contra prohibicionem domini regis . . . ideo consideratum est quod Thomas sit inde in misericordia' (*Placitorum Abbreviatio*, pp. 106-107).

There are numerous examples of the case where a jury is to say whether a certain parson has always had certain tithes; if yes, then a plea concerning them is definitely a plea *de decimis* and so of ecclesiastical jurisdiction; if no, and if the tithes belong instead to the church or chapel to which the plaintiff in the case has the right of presentation, then a plea concerning the aforementioned tithes is no longer an ecclesiastical plea *de decimis* but a plea of advowson, since the integrity of the patron's rights is thereby thereatened; and cognizance of advowson pleas belongs to the king's court. It is therefore really the decision of the jury that will determine whether the prohibition issued against such a case was valid or not (KB 26/124 m. 12d, an. 1242; KB 26/139 m. 5, KB 26/141 m. 12, an. 1250 etc.).

[54] KB 26/169 m. 17d (in appendix p. 286).

[55] KB 26/169 m. 71d (Prynne, *Records*, III, 117).

[56] 'Et predictus prior venit et defendit vim et injuriam quando etc. Et bene defendit quod ipse nuncquam post inhibitionem predictam placitum tenuit; et quod ita sit, ponit se super patriam' (CP 40/11 m. 6). This case is taken from the Michaelmas roll of the year 1275. It is possible that cases could be found in the rolls of the two preceding years, which I did not examine in detail. Having seen all the rolls for Henry III's reign, however, I believe there are no examples before 1273.

[57] 'Preceptum fuit vicecomiti quod venire faceret hic ad hunc diem XII . . . ad recognoscendum si predictus Philippus uncquam post prohibitionem regiam ei . . . exhibitam ne sequeretur placitum in curia christianitatis de catallis et debitis que non sunt de testamento vel matrimonio, secutus fuit idem placitum in eadem curia christianitatis coram cancellario universitatis Oxonie . . . vel non' (CP 40/32 m. 43, an. 1280).

The limits set for this study do not extend far enough to permit of witnessing the final complete triumph of the jury; but, even in 1286, wager of law is losing ground steadily and fast approaching that capitulation to which the various assizes had been reduced more than half a century before.[60] Holdsworth deems that, by the close of the thirteenth century, the victory of the jury is definitely assured.[61]

To resume, then, proof in a plea of prohibition is regularly made, with very few exceptions, either by wager of law or by jury, with the latter tending to supplant the former. If the party to whom it has been allotted succeeds in making the proof, he wins the case, as has been already observed. The final judgment follows, so to speak, automatically. It is this last phase of the court procedure, the *judicium*, which remains to be studied in our account of a plea in the king's court arising out of a writ of prohibition.

D. *Final Sentence*

The sentence really includes two things: first, a judgment as to whether the plea has been successfully sustained or not, in other words, as to which party has won the case, and secondly, the imposition of penalties. This section will therefore consider the actual judgment rendered and then the kinds of penalties that may be imposed.

On what exactly does the judgment turn? What is the point to be established? Since the plea is one against a person who is said to have sued or heard a non-ecclesiastical plea in a court christian contrary to a royal prohibition, the final judgment will be determined by the answer to be given, in the light of the foregoing procedure, to the following questions. Was the original action in the spiritual court about a purely secular matter as alleged, or was it, on the contrary, ecclesiastical? If it was truly ecclesiastical, the plea in the king's court will then be dismissed, for the court christian was, in this case, but doing its duty, and the writ of prohibition obtained under false pretences could not command obedience, since it is deemed to have 'had no place'.[62] If, on the other hand, the original action was one which ought to have been of the king's cognizance, it has then to be established whether the court christian deferred to the royal prohibition or not. If they did, there is again nothing more to be done, except to renew the prohibition and make it definitive; the fact of having attempted to take the action before the wrong court is not in itself blameworthy, as long as the action was abandoned as soon as the king's order was received. But, if the action was continued in spite of the prohibition, then and then only the ecclesiastical judges or the party, as the case may be, have been guilty of an offence 'against the royal crown and dignity'. There briefly is what the plea of prohibition is trying to prove; and whether the case be decided by the first speech of the plaintiff or defendant, or whether it be protracted through much pleading, it always turns about this central point.[63]

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[58] The following entry from the Easter roll of 1250 will serve as an example: 'Et ideo preceptum est vicecomiti quod venire faceret . . . XII tam milites etc. . . . ad recognoscendum si predictus archidiaconus et predecessores sui, quondam persone ecclesie de Buckingham, fuerunt in possessione de predictis decimis tanquam pertinentibus ad ecclesiam de Buckingham, sicut predictus archidiaconus dicit; vel si predictus Robertus le Butiller et predecessores sui, quondam persone ecclesie de Acchecote, solebant percipere predictas decimas tanquam pertinentes ad predictam ecclesiam de Acchecote et que est de advocatione predicti Willelmi de Engelfeuda, sicut idem Willelmus dicit' (KB 26/139 m. 5).

[59] See above p. 267.

[60] Among the cases relative to prohibition in the Common Pleas rolls for the year 1275, proof is given three times by wager of law and twice by jury. In 1280, each mode is used six times. In 1285, the jury serves five times out of nine.

[61] W. S. Holdsworth, *A Hist. of Engl. Law*, II (3rd ed., London, 1923), p. 195, and vol. I (5th ed., London, 1931), pp. 321-331. The king himself seems to have played a part in the victory of the jury over the wager of law; witness the allusion made among the grievances of the clergy (1280) to the fact that they are not allowed to choose between wager of law and recourse to jury whenever the king is a party to the plea; they are obliged, whether they like it or not, to accept the jury (*inquisitionem*). The text of these grievances has been published by Raine, *Historical Papers and Letters from Northern Registers* (Rolls Series, London, 1873), pp. 70-71: 'Nec potest judex coram justitiariis uti jure communi, scilicet de lege facienda manu tercia, si neget se contra prohibitionem venisse, sed dicunt justitiarii: "Rex est pars." Et tunc, sive velit sive nolit judex vel pars, ad inquisitionem procedunt.' The evidence of the plea rolls of the early part of Edward I's reign bears out this fact. In the rolls that I have examined, each time that the king is a party to the plea, recourse is had to a jury: CP 40/33 m. 9 (1280), CP 40/36 m. 117d (1280), CP 40/58 m. 26 (1285), CP 40/58 m. 53 (1285). I have seen no case where proof by wager of law figures when the king is a party. The records make no express mention that the other party is *obliged* to submit to a jury; in fact, the minute says 'they offer to put themselves on the country.' It is, nevertheless, significant in view of the clergy's complaint that all pleas where the king is a party do go to a jury. These facts are further confirmation of the opinion of Maitland that the popular notion of trial by jury as a check upon the king is a quite false one for the thirteenth century (Pollock and Maitland, *Hist. of Engl. Law*, II, 631; cf. Maitland, *The Constitutional History of England*, Cambridge, 1909, p. 130).

From the above summary, it will be seen that the defendant receives judgment in his favour whenever it is shown either that the plea in the ecclesiastical court was truly spiritual or that it did not proceed after the prohibition. In either case, the plaintiff suffers an amercement for his false claim (*pro falso clamore*), while the defendant is dismissed; with this distinction, however, that, if the justices recognize the original case to have been of ecclesiastical jurisdiction, they indicate that it may now safely proceed before the competent court,[64] whereas, if the defendant has denied no more than the *post pro-*

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[62] If, in fact, the king's prohibition is often obeyed even when the matter being tried in the Church court is truly spiritual, it is not because the court is bound to desist, regardless of whether the grounds alleged in obtaining the prohibition are true or not, but simply to avoid the inconvenience and even expense connected with appearing before the king's justices in order to defend one's right to proceed under these circumstances in spite of a writ of prohibition. Such an attitude is easy to understand when we remember that even though one prove that the nature of the original action justified proceeding with it, there is no reimbursement for the trouble and expense incurred. It is about this very fact that the clergy complains at the Council of London in 1257 (Wilkins, *Concilia*, I, 728; Matt. Paris, *Chronica Majora*, Rolls Series, London, 1873, VI, 360).

[63] A further text from the Council of London, mentioned in the preceding note (*loc. cit.*), summarizes the state of the question in almost the same way: 'Item in quibus omnibus casibus et similibus, si judex ecclesiasticus contra prohibitionem regiam procedat, attachiatur. Comparens coram justitiariis compellitur judex exhibere acta sua ut per ea decernant utrum negotium pertineat ad forum ecclesiasticum vel saeculare. Et si videatur eis quod pertineat ad forum regium, querelatur judex; qui, si confiteatur se post prohibitionem processisse, amerciatur; si neget, indicitur ei purgatio per judicem saecularem.'

[64] KB 26/77 m. 8 (1220): the defendant having proven that the plea in court christian was not one of lay chattels, the judgment is given: 'Et ideo consideratum quod prior procedat in curia christianitatis et Suetemannus in misericordia pro falso clamio.' *Bracton's Note Book*, II, 576, n° 755 (1233): a jury has agreed that the original case was truly one of sacrilege; hence the justices' decision: 'Et ideo consideratum est quod predictus Petrus licite procedat in curia christianitatis, quia illud placitum non pertinet ad coronam et dignitatem domini regis.' KB 26/124 m. 23d (1242): 'Postea per litteras predicti abbatis compertum est quod predicta causa est de re testamentaria et matrimoniali, et quod predictum placitum mere spectat ad forum ecclesiasticum. Et ideo consideratum est quod predicti Edmundus et archidiaconus inde sine die, et Robertus custodiatur.' CP 40/60 m. 50d (1285): 'Et quia hujusmodi placitum (*concerning obligation of offering blessed bread*) ad forum spectat ecclesiasticum . . . consideratum est quod magister Ricardus et alii inde sine die; et predictus Willelmus et alii nichil capiant per breve istud, et sint in misericordia pro falso clamio.'

It is interesting to note that even in cases like these, where the right to hear the particular plea in court christian is recognized, the royal justices often make use of the occasion, nevertheless, to warn ecclesiastics and others against ever at-

hibitionem,[65] the justices assume that the secular nature of the case is admitted and proceed to renew their prohibition even while they dismiss the successful defendant.[66] Such, at least, is the normal procedure; a few cases are met where neither the permission to go on in court christian, on the one hand, nor the renewed prohibition, on the other, is stated explicitly in the records.

It will be remembered that there may be two distinct defendants or groups of defendants, namely the one who was party to the plea in court christian and the judge who heard the plea in that court. The question naturally arises then, whether the fact of one proving that he has not transgressed the king's prohibition exonerates the other at the same time or not. Bracton's personal opinion seems to be that if either is successful in defending himself, the other too ought *ipso facto* to be acquitted; but he mentions that some jurists make a distinction. All, apparently, admit that, if the party to the plea in court christian is first dismissed by the king's justices as not guilty of suing a plea against a prohibition, the ecclesiastical judges are likewise to be freed of the charge of hearing the plea; some, however, would not extend this same favour to the party in the case where the judge is the first to prove himself innocent.[67] It is doubtful if this latter opinion had much influence in practice; the many prohibition cases in the plea rolls seem to provide no clear case of the plea against the party being sued further, once the judge has been dismissed.[68] The general practice of the king's court follows rather the opinion which Bracton seems to favour.[69] And the practice likewise confirms the view of jurists as a whole

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tempting to sue secular pleas before the courts of the Church; and so the minute in the plea roll ends with a sort of general prohibition such as: 'Et prohibitum est ne sequatur aliquod placitum contra coronam domini regis' (KB 26/92 m. 19), or: 'Prohibitum est quod non sequatur placitum de aliquo laico feodo' (KB 26/119 m. 6d).

[65] A flat denial of the plaintiff's accusation (see above p. 256) seems to be treated ordinarily as equivalent to denying the *post prohibitionem*, if we are to judge by the renewal of the prohibition which generally terminates these cases, even when the defendant is victorious.

[66] Even though there be no discussion at all of the nature of the original plea in the Church court, the order forbidding its continuance is given, sometimes in a general form, sometimes referring specifically to the particular case; thus for example: 'Et prohibitum est predicto Rogero ne decetero sequatur aliquod placitum in curia christianitatis de catallis que non sunt de testamento vel de matrimonio' (KB 26/137 m. 3d); 'Et ideo consideratum est quod predictus Philippus inde sine die . . . et prohibitum est predicto Philippo ne sequatur placitum predictum in curia christianitatis' (KB 26/143 m. 6d).

[67] *De Legibus*, IV, 276. That Bracton himself disagreed with this opinion may be gathered from the clause he adds after stating it, wherein he says that on the very face of things it is hard to see how anyone can sue a plea when there is no judge to hear it: 'Dicunt quidam quod si judex prius purgaverit, unus vel plures, quod ille qui secutus est non propter hoc liberatur . . . licet videatur prima facie quod non est qui sequatur, cum non sit qui teneat placitum.'

[68] Only one case where it is even doubtful has come to my notice. The record of a case on the Hilary roll of the year 1280 informs us that an ecclesiastical judge has wagered his law and then made it to prove that he did not hear a certain plea contrary to a royal prohibition; the judge is thereupon dismissed (CP 40/32 m. 18d). On the Trinity roll of the same year, however, is recorded the case in the king's court against the party who is alleged to have sued the plea before this same judge (CP 40/34 m. 47). This looks, at first sight, like an exception to the general practice. In reality, it is not necessarily so. It must be remembered that the making of the law takes place ordinarily some time after the wager; the entry made in the Hilary roll shows that such was the case in this particular instance, for, while the mention of the wager is in the regular hand of most of the entries, that of the making of the law is crowded in a smaller hand into the space left purposely for just such a later addition. It will perhaps be further objected that the royal justices had in this case assigned the next day for the making of the law. True, but the words which tell us the law was made do not state that this did actually take place on the day appointed; there is no mention of *in crastino* or *ad illum diem*, as is usual; the entry reads simply: 'postea venit et fecit legem.' The *postea* may signify a much later date, since it often happens that one does not make the law until quite some time after the date set. This particular case cannot, therefore, be taken as a clear exception to the general rule.

[69] At almost the same time as Bracton was writing, the annotator of a collection of cases for the years 1252-1256 was drawing attention to the fact that this was the practice. His comment on one of the cases transcribed by him is as follows: 'Nota

that there can be no case against the judge if the party has already been set free. Indeed, royal justices giving their decision in a plea of 1233 state explicitly that, since the party has shown that he did not sue the plea, it is *manifest* that the judge did not hear it.[70]

Not only on this point, but on others as well, Bracton would grant the defendants as favourable a position as possible. Thus, if there are several judges, the exoneration of one of them who makes his law ought, he says, to profit his colleagues also. And as the logical corollary of all this, he states that the condemnation of either the judge or the party does not necessarily imply the condemnation of the other one; similarly, the condemnation of one of the judges does not of itself mean the condemnation of his colleagues; each one in his turn is to have a fair chance to defend himself.[71]

Mention of the condemnation of the defendant leads to the consideration of the final sentence of the court viewed from this point of view; in other words, to the case where the plaintiff is successful, sustaining his plea against the defendant. The plaintiff may be victorious in two different ways; first, if the proof is allotted to him, he may succeed in proving that his adversary has proceeded in a non-ecclesiastical action in spite of a royal prohibition; secondly, when the proof is allotted to the defendant, the plaintiff may even then win the case, should the defendant fail to prove as he has undertaken to do.[72] In either case the losing party will be amerced by the court, and the prohibition will, of course, be renewed. In addition, the plaintiff will be awarded the 'damages' (*dampna*) he claims to have suffered, and he will recover likewise any money he may have been forced to pay in the ecclesiastical court if the case there had proceeded that far. Just what the nature of these various penalties was will be seen presently.

The formula in which the actual sentence is stated is, for the most part, disappointing to anyone who expects to derive therefrom information regarding the general principles of jurisprudence which guided the thirteenth century judges in the king's court. As has been observed,[73] the judge's role is less that of a true judge than of an arbiter; it is as though he presided over the proceedings before him as he would over a game, and had at the end only to announce officially how it had come out. As a result, the average sentence, especially where the proof has been furnished by wager of law, is dry and uninteresting, recording no more than the fact that the party came and made his law, wherefore he is dismissed and his adversary amerced.[74] The formula whereby judgment is rendered after the proof has been made by jury is often

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quod si tenens placitum fecerit legem, per legem illam quietus erit qui secutus esse debuit' (Brit. Mus., *Add. Ms.* 25179, fol. 38v).

[70] 'Et quia convictum est quod prior nullum placitum secutus est, et ideo manifestum est quod archidiaconus nullum placitum tenuit; et ideo ipse sine die' (*Bracton's Note Book*, II, 605, n° 788).

[71] *De Legibus*, IV, 277. Bracton, good cleric that he was, would seem, in his utter fairness to the defendants, to be applying the canonical axiom of jurisprudence, *odia restringi et favores convenit ampliari.*

[72] It may even be that the defendant will have no defence at all; whereupon judgment is given at once in favour of the plaintiff (KB 26/106 m. 7, 1230; KB 26/137 m. 12, 1250) Or, the defendant may fail to make his law after having wagered it (above p. 288). Or again, the decision of the jury when he has chosen this mode of proof may be against the defendant (*Placitorum Abbreviatio*, pp. 106-107; KB 26/124 m. 12d, etc.).

[73] Above pp. 252, 266.

[74] 'Ad diem illum venerunt predicti decanus et Walterus et fecerunt legem. Ideo ipsi inde sine die et Galfridus et Thomas in misericordia' (KB 26/143 m. 21, an. 1250). The formula is of largely the same sort in cases where the plaintiff has no suit to support his count, or where one or the other party is obliged to admit the truth of the other's statement; for example: 'Et quia predictus Robertus nullam sectam producit, consideratum est quod predictus Henricus inde sine die et Robertus in misericordia pro falso clamio' (KB 26/165 m. 4); 'Et Willelmus hoc non potuit dedicere; et ideo magister eat inde sine die et Willelmus in misericordia' (KB 26/77 m. 28d and *passim*).

just as laconic, stating barely the decision of the jury followed by: *et ideo inde sine die.* It is all like so much routine work, and, as far as the sentence at least is concerned, the cases seem to have no individual character.

Fortunately, however, there are a certain number of examples where, in addition to the bare judgment, the justices sum up the reasons which have led to this conclusion. At times this amounts to little more than a résumé of the concrete facts established in the plea;[75] but at other times there is inserted as a major premise some accepted rule of jurisprudence. This latter is most valuable; it serves as a precious index in determining the limits of jurisdiction recognized or claimed by the king's justices, not in theory only, but in the exercise of their office. It may be stated explicitly as a principle;[76] but more often it is implied in the considerations which precede and determine the judgment.[77] It is indeed regrettable that the cases where such principles are stated are not more numerous.

More disappointing still than the routine formulae of judgment are the minutes witnessing to cases which reach no conclusion or whose conclusion remains unknown to us. The earlier stages of the procedure may be recorded presenting us with a situation, the outcome of which might throw light on the question of jurisdiction and then the case is remanded to allow time to bring in proof or for some other reason. For one reading the rolls to-day there is nothing more; the space of several lines left blank to record the end of the plea is still empty.[78] And, of a similar nature, in so far as they do not result in the rendering of an official judgment, are those cases where the parties reach some sort of private agreement and leave the court without the plea being terminated there. Nevertheless, cases of this sort are interesting from the point of view of the practices in the court of that period. The object of the justices is eminently practical and is, above all, to reach an acceptable conclusion; they are much more concerned about arranging the original dispute to the satisfaction of the two parties to the plea than about discussing points of law. Bracton takes the trouble to urge justices to bring the two parties to some kind of peaceful setlement, if it is impossible to arrive at a clear-cut verdict.[79] It is undoubtedly as a result of this advice being followed that we sometimes find a compromise or agreement (*concordia*), instead of an official judgment, ending certain long and closely disputed cases.[80] Usually the plea rolls do no more than mention the fact of the agreement, although there are instances of the terms of the agreement being recorded in the minutes of the court,[81] which would lead to the conclusion that the matter was settled right before the justices and even through their mediation, the very conduct that Bracton was recommending.[82]

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[75] 'Et quia breve loquitur tantum de layco feodo et secta testatur quod de catallis, ideo consideratum est quod magister Robertus inde sine die' (*Bracton's Note Book*, II, 583, n° 762).

[76] 'Et ideo quia hujusmodi cognicio de maritagio pertinet ad forum ecclesiasticum, dictum est eisdem prioribus quod teneant placitum' (*Bracton's Note Book*, II, 354, n° 442). Cf. *ibid.*, II, 245 n° 293: 'Et ideo consideratum est quod bene licet eidem Willelmo sequi placitum illud in curia christianitatis cum sit de decimis;' also II, 427, n° 550.

[77] 'Et ideo quia placitum istud est dependens de matrimonio, et quia idem Rogerus constituit se soluturum denarios illos et renunciavit privilegio fori, et preterea quia idem Rogerus nullam sectam producit sufficientem quod idem prior tenuit placitum illud post prohibitionem, consideratum est quod prior inde quietus et Rogerus in misericordia' (*Bracton's Note Book*, II, 444, n° 570). 'Et quia Johannes primo subivit ibi forum, et quia ambo sunt persone ecclesiastice, et terra libera elemosyna, consideratum est quod episcopus procedat et . . . ipse hic inde sine die, et Johannes in misercordia' (KB 26/113 m. 18). 'Et quia predictus Henricus cognovit quod secutus est placitum in curia christianitatis cum non fuerit de testamento nec matrimonio, et etiam quia convictum est per juratos predictos quod secutus fuit placitum predictum post prohibitionem regiam ei delatam, consideratum est quod predictus Bartholomeus recuperet dampna sua . . . et magister Henricus custodiatur' (*Assise Roll* 573 m. 106; Norfolk, 1286; see appendix, p. 290).

[78] Reference has already been made to the presence of these empty spaces in the rolls; see p. 230, and also p. 270, n. 37 for a possible explanation of some of the spaces.

[79] *De Legibus*, III, 73: 'Tutius erit quod partes inducantur ad concordiam.' Opportunities were readily given for settling privately. Thus in 1201: 'Dies datus est . . . et interim habent licenciam concordandi' (*Curia Regis Rolls*, I, 410). In 1230, a defendant having denied suing contrary to a prohibition, the case is put off until the next term 'ut interim loquantur de pace' (KB 26/106 m. 1d). So too with a plea of 1260: 'Ponitur in respectum usque ad crastinum Sancti Johannis Baptiste . . . nisi interim conveniatur inter partes amicali conventione' (KB 26/165 m. 15d).

Permission to come thus to an agreement outside the ordinary course of the law, and so to leave unfinished a plea already begun, is looked upon, nevertheless, as a favour; hence the tariff imposed for the granting of this privilege. The amount of the charge varies considerably[83] and it is hard to say on just what the tariff is based. Most probably it is the quality of the persons involved that determines the figure in this regard as in others.

To come back to the regular court procedure of cases which do end in a sentence by the justices, it remains to be seen, after the actual judgment, what is the nature of the penalties imposed; for almost without exception the decision as to the result of the plea includes at the same time the infliction of a punishment on the loser. Two forms are classic in the thirteenth century, amercement[84] and imprisonment, and they may be visited upon the plaintiff or the defendant, according as the one or the other loses out. The case of each party will be considered separately.

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[80] The *Curia Regis Rolls* (VI, 79) for the year 1210 preserve a case where the defendant's claim that the chattels in question are testamentary is flatly denied by his adversary; they are in complete disagreement and so, the judgment in the case is put off until the Hilary term. The roll for that term makes no mention of the case, but in the following Michaelmas roll (*ibid.*, p. 121), it is recorded that 'Hugo de Kerdestona dat unam marcam pro licencia concordandi versus Fulconem Bainard.' The dispute has been settled amicably. See also *Placitorum Abbreviatio*, p. 108 (1241) and KB 26/137 m. 5 (1250) for cases which result similarly.

[81] 'Et Albertus per attornatum suum venit; et concordati sunt . . . Et est concordia talis quod . . .' There then follow the details of the compromise reached over the land which was in dispute (KB 26/141 m. 8d, 1250). For other such cases see *Bracton's Note Book*, II, 65 n° 73 and II, 282-283, n° 341.

[82] It has been suggested above (p. 266) that some at least of the frequent and puzzling cases, where a plaintiff for no apparent reason withdraws his plea, or frankly admits the truth of what his adversary advances, or makes no attempt to contest it, may in reality cloak an agreement reached privately by the parties, who then allow the case to be terminated by the normal court procedure instead of paying for the privilege of leaving it unfinished while they settle the difference between themselves; the two methods would amount to about the same thing. A certain case of the year 1249 seems to confirm the suggested similarity between the two. A woman complains of being impleaded in court christian not only for one hundred pounds, admittedly matrimonial, but likewise for forty more by way of a money fine. Her opponent avows the plea for the hundred pounds but denies the matter of the forty; whereupon she admits that he is right. What suggests that her change of mind is the result of an agreement, is that the scribe records the rest in terms very like those which are used in referring to the *licentia concordandi*; he writes: 'Et per licentiam remittat eis legem etc.' It is as though it is already fixed and she is merely getting permission for her adversary to be let off the law he has wagered (KB 26/135 m. 17).

[83] I have noted variations anywhere from 3 denarii to 2 pounds; thus, 3 den. (KB 26/137 m. 5; 1250); ½ mark (*Plac. Abbrev.* p. 108; 1241); 1 mark (*Cur. Reg. Rolls*, VI, 121; 1211); 20 solidi (KB 26/141 m. 8d; 1250); 40 solidi (*Assise Roll* 614 m. 4d; 1247).

[84] In this case, the minutes state simply that the person is *in misericordia*. Since it is question here of the king's court only, this means of course *in misericordia regis*; in the shire of seigneurial court, it would be *in misericordia vicecomitis* or *domini*. This punishment is so widespread in the thirteenth century and inflicted for such a variety of offences that its severity may well be doubted. Originally, however, it had been heavier, leaving the guilty one entirely at the king's mercy, as the word indicates, even to the point of confiscation of all his goods (*Dialogus de Scaccario*, Bk. II, ch. 16). At an early date an effort was made to set a limit to the amount one could be forced to pay. Already in Glanvill's time, it was cusomary to have other men under oath fix the amount that their neighbour should be amerced (*De Leg. et Cons. Angl.*, IX, 11), while Magna Carta goes on to ordain that the amercement shall be fixed *per sacramentum proborum hominum de visneto et secundum modum delicti* (ch. 20). The amercements were fixed at the close of each session and the amounts inscribed on the rolls of the king's court; unfortunately, but few of these latter still contain to-day the lists of amercements.

If the plaintiff fails, for whatever reason it may be, in the plea he is suing, he will be amerced for his false claim (*in misericordia pro falso clamio*, or *clamore*). Seldom, however, is the exact sum to be paid specified; there are but a few scattered figures available. A plaintiff of the year 1225, who has no suit (*secta*) suffers an amercement of 40 solidi.[85] In a plea of 1243, which results in favour of the defendant, the plaintiff is amerced 5 marks.[86] In the same year, another defendant, who loses his plea for speaking of lay fee whereas the writ of prohibition had been issued against an action for lay chattels, is obliged to pay 10 marks; but this amercement is for himself and the pledges who had guaranteed that he would sue the plea.[87]

While amercement is by far the commonest form of punishment, the king's justices do sometimes condemn a man to prison: *custodiatur* or *committatur gaolae*. Always, it is stated in this very general way, no precise period of time being mentioned. Indeed, the *custodiatur* is regularly followed by the statement: *et finem fecit per unam marcam* (or whatever the sum may be). It would seem therefore that, although the justices had the right to throw a man into prison, they preferred to commute the penalty into a money payment and that the *custodiatur* was in reality but an indirect way of inflicting a fine.[88] In 1242, after a sentence of *custodiatur*, the plaintiff pays a fine of half a mark;[89] in 1243-1244, a fine of one mark occurs,[90] and the same again in 1284 to replace a sentence of *commitatur gaolae*.[91] Strangely enough, there are a few cases where the sentence of *in misericordia* is commuted into a fine;[92] thus, in 1233, a fine of 40 solidi;[93] in 1243, two marks;[94] and in 1243-1244, one mark apiece by two plaintiffs.[95]

Attention should be drawn here, before leaving the case of the plaintiff who loses his plea, to the fact that, even though it be recognized that his adversary had not sued a secular plea in court christian as was alleged, the latter receives no sort of indemnity for the inconvenience and expense he may have been put to by having to come before the king's court and answer to a groundless plea.[96]

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[85] KB 26/92 m. 7. In 1201, a plaintiff who fails to appear in court is amerced one mark (*Cur. Reg. Rolls*, I, 433).

[86] KB 26/127 m. 16d.

[87] KB 26/129 m. 1d. The pledges are amerced each time the plaintiff fails to appear or withdraws in any way whatsoever from his writ.

[88] Pollock and Maitland have remarked on the fact that it was not common to keep men in prison (*Hist. Engl. Law*, II, 584). Elsewhere (p. 517) they explain the reason for this indirect procedure. The justices could not themselves set the amount to be paid by the guilty party; such a thing would be contrary to the dispositions of Magna Carta on the subject of amercements. The court did not therefore inflict fines. But it could circumvent this difficulty by sentencing a person to prison and then allowing him to 'make an end' (*finem facere*) of the thing by paying a certain sum of money. It should be noted that the word 'fine' referring to these transactions is not used in the modern sense. *Finem facere* did not mean 'to pay a fine;' it got its sense from the Latin word *finis*. It was a bilateral transaction, a bargaining so to speak, to bring a dispute or some affair to a close; it was not a penalty imposed. Hence, this procedure of 'making an end' could be used to commute a judicial sentence, or it could be used just as well to transform a feudal service or a duty of any kind into a money payment.

[89] KB 26/124 m. 23d: 'Et ideo consideratum est quod predicti Edmundus et archidiaconus inde sine die et Robertus custodiatur. Postea venit predictus Robertus et finem fecit per dimidiam marcam per plegium Johannis de Beyford.' Payment never seems to be made at once; a promise to pay at a future date and the furnishing of pledges suffice.

[90] *Placitorum Abbreviatio*, p. 121.

[91] *Assise Roll* 497 m. 60.

[92] Pollock and Maitland have not noted this possibility (*Hist. of Engl. Law*, I, 517). This may have been a similar expedient on the part of the justices to have the amount fixed by themselves, instead of leaving it in the hands of *probi homines* of the neighborhood, as provided for by Magna Carta.

[93] *Bracton's Note Book*, II, 605, n° 788.

[94] KB 26/129 m. 9: 'Et quia . . . bene constat quod hujusmodi cause cognitio ad forum spectat ecclesiasticum, ideo consideratum est quod predictus Andreas inde sine die et Warinus et alii in misericordia; et finem fecerunt per duas marcas.'

[95] *Placitorum Abbreviatio*, p. 121.

[96] Hence the result referred to on p. 275, n. 62, namely the dropping of an action, even though truly spiritual, in court christian, simply to avoid the inconveniences of a plea in the king's court.

If it be the defendant who is loser in the plea, the sentence against him, as far as the penalty goes, will be similar to that in the foregoing case: *sit in misericordia* or *custodiatur*.[97] The practical results seem likewise to be the same, although information as to the exact sum paid is even scarcer here than in the case of the plaintiff. In general, the amount is greater for the defendant, but it appears to bear some relation to the quality of the person concerned. The abbot of Malmesbury, for instance, owes 100 marks and his fellow judge, the abbot of Stanley, 50 marks for having judged an action *contra prohibitionem*.[98] Richard of Horton, treasurer of the church of Lincoln, is amerced 10 pounds when he hears a plea of advowson in spite of a royal prohibition.[99] These are for the time very considerable sums of money.

The amercement, however, is not all the unfortunate defendant has to pay when he is found guilty: he is likewise liable for the damages (*dampna*) claimed by the plaintiff.[100] Indeed, the count or *narratio* of the latter concludes with a statement of the amount claimed by way of damages. The sum may vary a great deal: from as low as half a mark to as high as 100 pounds in cases contained in the plea rolls. It is not clear why so great a difference should exist in comparatively similar cases. The figure which recurs most frequently is that of 100 solidi. Very probably the sum estimated was never meant to be an exact estimate of the damage sustained, since the figures with very few exceptions are convenient multiples of ten. Moreover, in the majority of cases, the minute does not contain the sum estimated, since the scribe contents himself with the abbreviated formula: *Et dampnum habet ad valenciam etc.*, as though the figure stated mattered but little. And rightly so, for it is the justices or the jurors who finally fix the amount of damages to be paid. Sometimes they accord the sum indicated by the plaintiff,[1] but not always; sometimes, on the contrary there is a great discrepancy between what they grant and what was originally demanded.[2]

Nor does that exhaust the expenses to which the losing defendant may be put. He is bound, in addition, to reimburse the plaintiff for anything the latter may have been forced to pay in court christian, should the original plea have proceeded that far.[3] It is not surprising, therefore, to find the poor defendant acquitting himself badly of his different obligations; whereupon the sheriff is instructed to collect the sum due from the lands of the guilty party,[4] or, if he be a clerk, recourse may be had to a higher ecclesiastical authority.[5]

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[97] *Custodiatur* may sometimes have its literal sense, as is evidenced by a royal letter of 1216 ordering that a certain cleric who is in prison because of a plea *contra prohibitionem* be handed over to the bishop (*Rotuli Litterarum Patentium*, p. 123).

[98] *Rot. Litt. Claus.*, I, 32 (1205). These judges had been condemned in 1201 for hearing a plea of tithes pertaining to a royal sergeantry.

[99] *Assise Roll* 501a, m. 41 (1284).

[100] See Pollock and Maitland, *op. cit.*, II, 522-526 on this question. The demand for damages is still comparatively new at the beginning of the thirteenth century, but this form of pecuniary compensation develops very early and very quickly in pleas relative to prohibition. The reason is that in such pleas there is no practical and immediate remedy at hand: there is, for example, no land or other goods to be given back, etc. It was but fair that such compensation be provided for, but the fairness observed here makes the unfairness in the case of the defendant, who receives no compensation when he is exonerated, all the more remarkable (See above p. 280).

[1] *Plac. Abbrev.*, pp. 106-107 (1240): 20 marks. *Assise Roll* 497 m. 63 (1282): 10 pounds.

[2] In 1286, the court decides that the plaintiff *recuperet dampna sua que taxantur per juratos ad sex marcas*, whereas he had demanded 20 pounds (*Assise Roll* 573 m. 106; published in appendix p. 289). An indication of the year 1282 reveals that of the damages levied by the justices a part is reserved for the clerks of the court. In the particular case the damages are fixed at 10 pounds, and a marginal note observes: *Dampna decem librarum unde quinque marce clericis.* They receive one third of the whole sum (*Assise Roll* 497 m. 63). In 1286, the clerks receive half of the six marks accorded to the plaintiff as damages (*Assise Roll* 573 m. 106). These are the only mentions of the sort I have noticed.

[3] *Assise Roll* 573 m. 107 (1286): the defendant is obliged to pay back the 40 solidi which his adversary had had to pay him in the ecclesiastical court, as well as 20 more solidi in damages. See also the same roll, m. 103, published in appendix p. 289.

With the penalties or sanctions imposed by the king's justices ends this long recital of the procedure in the royal court and, at the same time, the account of the functioning of the writ of prohibition with its judicial sequel. Without attempting to resume in any way, it may, nevertheless, be useful to point out at least two facts which stand out in the procedure and which throw considerable light on the nature of the writ itself and on the history of its development and use.

In the first place, the lack of initiative on the king's part and that of his court is quite evident. At every moment of the action, in the original complaint, in the delivery of the writ, in the accusation, in the proof (in so far as the *secta* or suit is a proof), it is the plaintiff who must take the lead; and should he fail at any of these points, the plea is dropped, the defendant being dismissed without further ado. To be sure, this is but the normal procedure in a personal action before the court of Common Pleas, but it is worth insisting upon here, since the writ of prohibition has often been spoken of as though it were a weapon wielded directly by the royal authority against the ecclesiastical jurisdiction. The king does, it is true, give force to the writ, but it is his subjects who must make use of it.

Secondly, it is to be noted that the writ of prohibition does, nevertheless, a considerable damage to the court christian, which is in a very disadvantageous position. The ease with which a prohibition may be procured has already been remarked. And from the moment of the issue of the writ, the court christian, however innocent it may be, cannot escape expense and inconvenience without dropping the action before it altogether. For, recourse to consultation necessarily involves expense,[6] while proceeding with the case in spite of the prohibition leads inevitably to a summons before the king's court to explain why the injunction has not been obeyed. Either of these expedients will be costly and, even though it be proven that the court christian was perfectly justified, the latter can claim no right to indemnification. Little wonder then if many ecclesiastical judges, rather than incur expense and inconvenience,[7] prefer to drop cases altogether whether they be of a spiritual nature or no; whence *perit justitia*, as the council of London laments in the year 1257.[8] Certainly such surrender would tend to weaken ecclesiastical authority in the matter of jurisdiction, to the profit in many cases of the royal authority.

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[4] *Plac. Abbrev.* pp. 106-107 (1240); *Somersetshire Pleas,* I, 343, nº 1325 (1242); KB 26/141 m. 9a d. (1250).

[5] KB 26/154 m. 4d (1254); KB 26/169 m. 32d (1260).

[6] Consultation in the thirteenth century must have been much less convenient in practice than in theory. We find the clergy in 1285 requesting the appointment of certain persons who should be always present at London for purposes of consultation (Wilkins, *Concilia,* II, 115-116). Nor were the clergy the only ones to complain: in 1290, a similar petition is presented to parliament by *plures de populo* (*Rot. Parl.,* I, 47, col. 2).

[7] The inconvenience is usually greater for the defendant, since he may not put an attorney in his place, when it is question of a prohibition plea. In most civil pleas, either plaintiff or defendant may use freely of an attorney and, if we are to judge by the frequency with which they take advantage of the privilege, it would appear that people in the thirteenth century were glad to avoid the bother of appearing in court. In prohibition pleas, the plaintiff is unrestricted in his use of an attorney and the cases where he is represented by an attorney are certainly as numerous as those in which he appears personally. The defendant, on the other hand, is denied this privilege and must come himself before the court. By very special grace of the king an exception may be made, but among hundreds of prohibition pleas examined I have seen only some eight in which this exception is granted. It is in a royal letter granting it to certain ecclesiastical judges that the general practice is stated clearly. Attached to answer for hearing an advowson plea contrary to a prohibition, the judges are unable through illness to appear, whereupon the archbishop of York begs that they be excused and the king accords them, as a very special favour, the right to put attorneys in their place; but in his letter he makes it clear that this is done, 'licet in hujusmodi loquela secundum consuetudinem regni nostri non debeant aut consueverint attornati ex parte defendencium constitui nec admitti' (*Close Rolls 1253-1254,* p. 141). This inability to use an attorney is therefore

In conclusion, this review of the actual working of the writ and plea of prohibition confirms the result arrived at elsewhere,[9] that fundamental opposition between secular and spiritual jurisdictions in the thirteenth century is lacking; principles remain safe, while disputes turn around questions of fact and interpretation. Nevertheless, it shows just as clearly that the unrelenting pressure exercised by means of writs of prohibition did result in practice in appreciable gains for the king's court, so that considerable litigation that would have passed before courts christian in the late twelfth century was coming into the king's court in the late thirteenth. That this should be the case, when the Church's representatives were certainly not yielding ground easily, would be difficult to understand if a study of the actual procedure did not permit us to see how the ecclesiastical courts found themselves constantly disadvantaged and just how the constant pressure of prohibitions was rendered so effective.

APPENDIX

The following documents consist of a selection of typical minutes from the plea rolls of the king's court. While the pleas have been chosen more or less at random, an attempt has been made nevertheless to select a group that would be representative of various types of pleas as well as spread over the whole thirteenth century. The first two documents have already appeared in print, the others are hitherto unpublished; with the exception of the last one, all are taken from rolls preserved in the Public Record Office, London, and the shelf marks are given according to the classification of the P.R.O.

I. 1201, Hilary Term

Eborardus de Binetre[1] queritur quod Herebertus frater ejus traxit eum in placitum in curiam christianitatis de laico feodo suo contra prohibitionem justiciariorum. Et Herebertus venit et interrogatus dicit quod inplicitavit eum super lesionem fidei sue de quodam escambio terre, quam Eborardus ei abstulit, et habet terram suam propriam et escambium. Dies datus est eis a die Pasche in unum mensem: et interim habent licenciam concordandi: et interim remaneat placitum in curia christianitatis (*Curia Regis Rolls*, I, 405).

II. 1225, Michaelmas Term

Ricardus persona de Mapeltuna[2] atachiatus fuit ad respondendum Thome de Holeny, Hugoni filio Cecel, Stephano Mus, Willemo Blundo et Ade de Ros quare contra prohibitionem etc. secutus est placitum etc. de catallis que non sunt etc. unde ipsi Thomas et alii queruntur quod ipse exigit ab eis in curia christianitatis XL marcas, per quod deteriorati sunt et maximum dampnum habent.

Et Ricardus venit et defendit quod de catallis non traxit eos in placitum sed de decimis suis, ita quod ipse vendidit comiti Albemarlie XL marcas de blado suo de decimis set noluit bladum illud dimittere nisi predicti Thomas et alii

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one more disadvantage under which the defendant in a prohibition plea will necessarily labour even if right be actually on his side.

[8] Wilkins, *Concilia*, I, 723 (Matt. Paris, *Chron. Maj.*, VI, 360). Bishop Grosseteste complained as early as 1236 of the same thing (*Epistolae*, nº LXXII,* p. 227).

[9] *Mediaeval Studies*, III, 115; VI, 301, 309.

[1] Co. Norfolk.

[2] Mappelton, Yorkshire (West Riding).

manucepissent pro comite quod redderent ei illas XL marcas in redditu eorum de nundinis Sancti Botulphi; et ad hoc faciendum juraverunt, tactis sacrosanctis. Et quia comes non reddidit ei denarios illos, ideo illos exigit ab eis.

Et quia cognoscitur quod comes est principalis debitor et satis habet unde pecuniam solvere possit, consideratum est quod Ricardus capiat se ad comitem, si voluerit et quod non sequatur hoc placitum in curia christianitatis, et sit in misericordia quia secutus fuit contra prohibitionem etc., et faciat eos absolvere, eo quod dicunt quod excommunicati sunt. Et sciendum quod Ricardus cognoscit quod primo inplacitavit eos in curia domini regis apud Eboracum coram Simone de Hales et ibi non potuit denarios illos recuperare.

Postea veniunt burgenses[3] et cognoscunt quod volunt inde placitare in curia christianitatis.[4] (KB 26/92 m. 13; cf. *Bracton's Note Book*, ed. F. W. Maitland, London, 1887, vol. III, pp. 518-519).

III. 1231, Trinity Term

Et[5] Willelmus venit et defendit contra ipsum et contra sectam suam quod nunquam post prohibitionem implicitavit ipsum de catallis que non sunt de testamento etc. set dicit quod implacitavit eum super decimis et arreragio decimarum et super transgressione sacramenti petens ut ratione sacramenti penitentia canonica affligeretur corporali et non penitentiaria. (*corr.* pecuniaria).

Dicit etiam quod, cum idem Osbertus tulisset prohibitionem domini regis, protestatus est idem Willelmus coram judicibus suis quod, si forte super debitis vel catallis que non sunt de testamento vel matrimonio aliqua ferreretur sententia, nulla esset ipso jure, quia voluit prohibitioni domini regis derogare. Et inde profert acta que hoc testantur; et Osbertus profert acta sua que concordant cum actis predicti Willelmi. Et preterea secta sua quam producit nichil probat. Et ideo Willelmus sine die et Osbertus in misericordia. Et prohibitum est eidem Willelmo ne sequatur aliquod placitum quod spectet ad coronam et dignitatem domini regis. (KB 26/109 m. 18d).

IV. 1242, Michaelmas Term

Magister Nicholaus de Rye attachiatus fuit ad respondendum priori de Helegeye[6] procuratori abbatis et conventus de Gymeges[7] de placito quare secutus est placitum in curia christianitatis de ecclesia de Helegey de decimis totius insule de Helegeye, quas ipsi abbas et conventus habent de dono predecessorum domini regis regum Anglie, et unde dominus rex est patronus, contra prohibitionem etc. Et unde predictus prior queritur quod cum predictus abbas et conventus fuisset (sic) in seisina de predicta ecclesia et predictis decimis a conquestu Anglie per donum regis Willelmi et per cartam suam et per cartam regis Henrici avi domini regis qui nunc est, quas profert, et que hoc testantur etc., et semper hucusque extitissent in pacifica possessione earundem, idem magister Nicholaus contra predictum donum et predictas cartas et contra prohibitionem domini regis et in prejudicium sui patronatus secutus est placitum in curia christianitatis de predicta ecclesia et predictis decimis contra predictos abbatem et conventum unde deterioratus est et dampnum habet ad valenciam centum librarum; et inde producit sectam.

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[3] The plaintiffs are probably burgesses of York.

[4] The reading in *Bracton's Note Book* is quite different: '. . . quod volunt inde placitare in curia domini regis et ideo datus est eis dies etc.' Bracton again refers explicitly to this case in his *De Legibus*, ed. G. E. Woodbine, vol. IV (New Haven, 1942), pp. 266-267.

[5] The first part of the entry occurs at the bottom of the recto side of the membrane which is so badly eaten away as to be unreadable. One may gather that Osbert of Northbrook is suing a plea against a certain William who is said to have failed to defer to a royal prohibition *de catallis etc.*

[6] Hayling, an island off the coast of Hampshire.

[7] Abbey of Jumièges in Normandy.

Et magister Nicholaus venit et defendit vim et injuriam etc. Et dicit quod nunquam secutus est aliquod placitum in curia christianitatis de predicta ecclesia vel de decimis, post prohibitionem etc. Set dicit quod revera ipse est rector predicte ecclesie, institutus per episcopum Wintoniensem, et est in possessione totius predicte ecclesie et quod petiit predictas decimas tanquam spectantes ad ecclesiam suam et illas de quibus Anketillus predecessor suus fuit seisitus etc.

Et prior venit et dicit quod predictus magister Nicholaus non potest habere in predicta ecclesia nisi tantum vicariam et quod predictus Anketillus nec aliquis predecessorum suorum postquam predicta ecclesia eis data fuit, sicut predictum est, nichil habuerunt in predicta ecclesia nisi tantum vicariam, quia ipsi sunt persona et ecclesiam illam habuerunt in proprios usus de dono predicti regis Willelmi etc. Et proferunt cartam Godefridi quondam episcopi Wyntoniensis,[8] que testatur quod ipse divine pietatis intuitu concessit et carta sua confirmavit in puram et perpetuam elemosinam monachis de Gemetico ecclesiam de Helegeye, sicut ex dono Willelmi quondam regis Anglie eam sunt adepti cum omnibus ad eam pertinentibus et omnibus salva in omnibus auctoritate et dignitate Wyntoniensis ecclesie et salvo in omnibus jure episcopali etc.

Dies datus est eis de audiendo judicio suo a die Pasche in unum mensem. Et prohibitum est predicto magistro Nicholao ne interim sequatur versus eos, et quod faciat eos absolvi qui per eum fuerant excommunicati et, si quod de portione predicti prioris ceperit, illud eidem reddi faciat. Et similiter dictum est eidem priori, si quid ceperit de portione predicti magistri, illud ei reddi faciat etc.

Postea ad diem illum venit predictus prior et questus fuit quod predictus Nicholaus non fecit eum absolvi nec ei satisfecit de predicta transgressione neque de dampnis etc. Et, quod idem magister cognoscit quod est persona predicte ecclesie et institutus per provisionem domini pape, et clamat habere predictas decimas tanquam spectantes ad ipsam ecclesiam, et compertum est per ipsam provisionem quod non potest plus exigere in ipsa ecclesia preterquam tantum vicariam, et ipse magister non potest dedicere quin quod hoc fecit in prejudicium domini regis, cum predictus prioratus fundatus sit de elemosina domini regis, consideratum est quod predictus magister custodiatur.

Post venit predictus magister Nicholaus et recognoscit se nullum jus habere in petitione decimarum ecclesie de Heylinge, super quibus contra predictum priorem et conventum litigavit, et quod contentus erit a portione qua contentus fuit Anketinus predecessor suus et quod omnia instrumenta que penes se habet de causa predicta infra quindenam Sancti Martini,[9] et quod omnes excommunicatos ob predictam causam absolvi faciet infra terminum, sicut plenius continetur in carta ipsius magistri quam idem prior inde habet. (KB 26/124 m. 27d).

V. 1243, Trinity Term

Magister Henricus de Tyringham attachiatus fuit ad respondendum Reginaldo, decano de Geudeford,[10] de placito quare secutus est placitum in curia christianitatis de catallis ipsius decani que non sunt de testamento etc. contra etc. et unde idem decanus queritur quod predictus Henricus traxit eum in placitum in curia christianitatis auctoritate domini pape coram judicibus delegatis de bobus, vaccis et aliis catallis ad valenciam centum solidorum. Unde dicit quod deterioratus est et dampnum habet ad valenciam decem marcarum etc.

Et magister Henricus venit et deffendit vim et injuriam quando etc. Et bene deffendit quod numquam inplacitavit ipsum post prohibitionem, sed dicit quod revera ipse aliquando inplacitavit predictum decanum de quibusdam catallis cujusdam Ricardi Pyrifright, cui predictus magister Henricus dimiserat ecclesiam suam ad firmam, et que catalla idem Ricardus ei obligaverat pro quadam summa peccunie in qua ipse ei tenebatur pro predicta firma, ita quod, quando predictus Ricardus laboravit in extremis assingnavit predicta catalla in testamento suo ad aquietandum eidem Henrico predictum debitum. Et quia predictus decanus non potest hoc dedicere, et predictum placitum mere spectat ad curiam christianitatis eo quod causa testamentaria est et omnes clerici sunt, ideo consideratum est quod predictus magister Henricus inde sine die et sequatur in curia christianitatis versus eum non obstante etc., si voluerit. Et decanus in misericordia. (KB 26/130 m. 18d).

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[8] Godfrey de Lucy (1189-1204).

[9] The verb is lacking; the sense requires some word like *reddet*.

[10] Guildford, co. Surrey.

VI. 1253, Michaelmas Term

Thomas le Flemeng attachius fuit ad respondendum predictis Ricardo (de Amyens), Rogero (le Wayels) et Amicia (uxor ejus) de placito quare secutus est idem placitum (de catallis et debitis que non sunt de testamento etc.) in eadem curia christianitatis contra eandem prohibitionem etc.; et unde iidem Ricardus et alii queruntur quod ipse traxit eos in placitum in prefata curia christianitatis coram predicto Berardo (de Nimphe), et petiit a predicto Ricardo sexaginta solidos et a predictis Rogero et Amicia tresdecim marcas que non sunt de testamento etc. contra etc.

Et Thomas venit et bene cognoscit quod ipse inplacitavit eos in prefata curia eo quod crucesignatus est; et super hoc mandavit predictus Berardus, cui commissa est cura de negociis crucesignatorum servandis, quod predictus Thomas curcesignatus est et quod justam habet causam in predicta pecunia petenda. Et ideo Thomas inde sine die, et dictum est ei quod sequatur in prefata curia versus eos si voluerit etc. (KB 26/148 m. 13d).

VII. 1260, Michaelmas Term

Willelmus filius Philippi le Rus attachiatus fuit ad respondendum Ricardo le Tayllur de placito quare secutus est placitum in curia christianitatis de catallis et debitis que non sunt de testamento vel matrimonio contra prohibitionem etc. et unde predictus Ricardus queritur quod, cum predictus Willelmus implacitasset ipsum in curia christianitatis coram magistro Waltero de Northamtonia, officiali archidiaconi Middelsexe, in ecclesia Beate Marie de Estbedefunte[11] petendo ab eo tres equos, quatuor boves, tres vaccas, duodecim porcos et quadraginta oves, que (non) sunt de testamento vel de matrimonio, et idem Ricardus detulisset ei regiam prohibitionem in predicta ecclesia die Jovis proxima ante Nativitatem Beate Marie anno XLIII°[12] ne in prefata causa procederet, predictus Willelmus, spreta prohibitione regia, semper postea secutus est idem placitum contra predictam prohibitionem, unde dicit quod deterioratus est et dampnum habet ad valenciam centum solidorum. Et inde producit sectam, etc.

Et Willelmus venit et deffendit vim et injuriam quando etc. Et bene deffendit quod nunquam secutus fuit aliquod placitum (de catallis) que (non) sunt de testamento vel matrimonio, sed revera dicit quod inplacitavit ipsum coram predicto officiali antequam predictam prohibitionem recepisset et post, petendo ab eo predicta averia. Dicit enim quod, quando ipse Willelmus duxit filiam predicti Ricardi in uxorem, promisit idem Ricardus eodem Willelmo predicta averia cum filia sua, per quod idem Willelmus duxit filiam suam in uxorem; alioquin nullum matrimonium inter ipsum Willelmum et filiam ipsius Ricardi esset contractum. Et petit judicium si prohibitio regia in tali casu debeat locum optinere.

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[11] Bedfont East, co. Middelsex.

[12] September 4, 1259.

Et Ricardus dicit quod nunquam promisit ei predicta averia ratione matrimonii contracti inter ipsum Willelmum et filiam suam, quia dicit quod quidam Gilbertus de la Wyke, capitalis dominus predicti Willelmi, in cujus custodia idem Willelmus exstitit, dimisit eidem Ricardo omnes terras et tenementa que habuit in custodia sua de hereditate predicti Willelmi in Bedefunte ad terminum sex annorum per sic quod idem Ricardus post terminum sex annorum redderet eidem Willelmo predictam terram instauratam cum predictis averiis. Et dicit quod per dimissionem predicti Gilberti tenuit ipse predictam terram per tres annos; et tunc venit idem Gilbertus et ejecit ipsum de eadem terra et fecit ipsum Willelmum inplacitare predictum Ricardum coram predicto officiali pro predictis averiis. Et quod nullam promissionem fecit predicto Willelmo de predictis averiis ratione alicujus matromonii (*sic*), immo predicto Gilberto pro custodia terrarum et tenementorum ipsius Willelmi habenda usque ad terminum sex annorum, infra quem terminum idem Gilbertus ipsum ejecit, ponit se super patriam et Willelmus similiter. Et ideo preceptum est vicecomiti quod venire faciat a die sancti Hillarii in quindecim dies per quos etc. et qui nec etc. ad recognoscendum etc. si predictus Ricardus promisit predicto Willelmo predicta averia cum Johanna filia predicti Ricardi sicut predictus Willelmus dicit, vel si predictus Ricardus nullam promissionem fecit predicto Willelmo de predictis averiis, quando matrimonium fuit contractum inter ipsum W. et predictam J., immo fecit promissionem de predictis averiis predicto Gilberto pro custodia terrarum et tenementorum ipsius Willelmi habenda usque ad terminum sex annorum infra quem terminum idem Gilbertus ipsum Ricardum de eisdem tenementis ejecit, sicut predictus Ricardus dicit. Quia tam etc. (KB 26/169 m. 17d).

VIII. 1280, Hilary Term

Reginaldus subprior de Coventre et Nicholaus precentor de Coventre in misericordia pro pluribus defaltis.

Idem Reginaldus et Nicholaus attachiati fuerunt ad respondendum domino regi de placito quare, cum placita de catallis et debitis que non sunt de testamento vel matrimonio ad dominum regem et coronam et dignitatem suam et non ad aliam in regno suo pertineant, iidem Reginaldus et Nicholaus sicut ex relatu plurium accepit dominus rex tenuerunt placitum in curia christianitatis de catallis et debitis abbatisse de Wiltonia que non sunt de testamento vel matrimonio in lesionem corone et dignitatis regis et contra prohibitionem etc. Et unde quidam Johannes Husee, qui sequitur pro rege, queritur quod, cum magister Radulfus de Perci inplacuisset abbattissam de Wiltonia in curia christianitatis coram predictis Reginaldo et Nicholao petendo ab ipsa decem libras que non sunt de testamento vel matrimonio, et idem Johannes nomine domini regis detulisset eis regiam prohibitionem in crastino Sancti Mathei Apostoli anno regni nunc septimo in magna ecclesia Beate Marie de Coventre ne predictum placitum tenerent, predicti Reginaldus et Nicholaus, spreta predicta prohibitione, tenuerunt dictum placitum in lesionem corone domini regis centum marcarum et dampnum ipsius abbatisse viginti librarum. Et inde producit sectam etc.

Et Reginaldus et Nicholaus veniunt et defendunt vim et injuriam et contemptum etc. Et bene defendunt quod numquam post predictam prohibitionem eis exibitam tenuerunt ipsi predictum placitum in curia christianitatis etc.; et quod ita sit petunt quod inquiratur per patriam. Et Johannes Husse, qui sequitur pro domino rege, similiter. Ideo preceptum est vicecomiti quod venire faciat hic a die Pasche in unum mensem XII etc. per quos etc. et qui nec etc. ad recognoscendum in forma predicta; quia tam etc.

Idem Johannes Husee, qui sequitur pro rege, optulit se quarto die versus predictum Radulfum de Percy de placito quare secutus idem placitum in curia christianitatis contra prohibitionem etc. Et ipse non venit. Et preceptum fuit vicecomiti quod attachiaret eum quod esset hic ad hunc diem. Et vicecomes nichil inde fecit set mandavit quod clericus est et non habet laicum feodum etc. Ideo mandatum est episcopo Saruberiensi quod venire faciat eum hic ad prefatum terminum etc. Et unde vicecomes mandavit etc. (CP 40/32 m. 83d).

IX. 1285, Hilary Term

Willelmus de Mortuo Mari clericus per atornatum suum optulit se .IIII. die versus Johannam de Huntingfeud de placito quare, cum predicta Johanna attachiata esset in curia regis hic in octabis Sancti Michaelis anno regni regis nunc septimo[13] ad respondendum predicto Willelmo de placito quare secuta fuit placitum in curia christianitatis de catallis et debitis que non sunt de testamento vel matrimonio contra prohibitionem regis etc ad quem diem predicta Johanna venisset in eadem curia per attornatum suum et vadiasset ei inde legem suam et habuisset diem in octabis Sancti Hilarii anno regni regis nunc nono[14] ad quem diem predicta Johanna essoniata fuisset et habuisset diem per essoniatorem suum in octabis Sancte Trinitatis proxime sequentis,[15] ad quem diem predicta Johanna venisset in eadem curia regis et fecisset inde legem suam, et eidem Johanne ex parte regis inhibitum esset et preceptum ne predictum placitum in predicta curia christianitatis ulterius sequeretur, eadem Johanna postea, post predictam prohibitionem ei inde factam, predictum placitum in predicta curia christianitatis contra preceptum regis secuta fuit, ita quod ad sectam suam idem placitum jam devolutum est et positum in curia archiepiscopi Cantuariensis coram decano de Arcubus Londonie in contemptum dignitatis et corone regis et lesionem manifestam necnon et dicti Willelmi dampnum et gravamen etc. (CP 40/57 m. 35d).

X. 1285, Michaelmas Term

Magister Ricardus de Horton, magister Ricardus, vicarius ecclesie de Luda, et Walterus le Peleter attachiati fuerunt ad respondendum Willelmo Paytefin de Brokenbergh' Alano Atte Grene, Stephano le Provost, Rogero filio Johannis, Willelmo filio Alani Willelmo filio Walteri, Hugoni filio Alani et Willelmo de la Mare de placito, quare tenuerunt placitum in curia christianitatis de catallis et debitis que non sunt de testamento vel matrimonio contra prohibitionem etc. Et unde queruntur quod cum predicti magistri Ricardus, Ricardus et Walterus in ecclesia Beate Marie de Luda tenuissent predictum placitum exigendo ab eis quatuor denarios panis et sex denarios ac idem Willelmus et alii die lune in septimana Pasche anno regni regis nunc duodecimo[16] in predicta ecclesia detulissent eis predictam regiam prohibitionem ne predictum placitum tenerent, predictius magister Ricardus et alii, spreta prohibitione predicta, predictum placitum tenuerunt ad dampnum ipsorum Willelmi, Alani et aliorum viginti librarum, et inde producunt sectam etc.

Et predictus magister Ricardus et alii veniunt. Et defendunt vim et injuriam quando etc. Et dicunt quod predicti Willelmus et alii sunt parochiani ipsius Magistri Ricardi de Horton, persone predicte ecclesie de Luda, et cum eis accidebat pro turnis suis panem dare benedictum in parochia, predictum panem dare contradicebant propter quod idem magister Ricardus et alii ipsos monebant ad predictum panem benedictum prestandum, qui alias illum dare contempserunt, ob quod per censuram ecclesiasticam ipsos compulserunt ad predictum panem prestandum; et petunt judicium si debeant eis de predicto placito in curia domini regis respondere. Et quia hujusmodi placitum ad forum spectat ecclesiasticum nec predicti Willelmus et alii possunt dedicere quin predictus Ricardus et alii predictos Willelmum et alios pro predicto pane benedicto implacitaverunt non de aliquo alio placito, consideratum est quod predictus magister Ricardus et alii inde sine die; et predictus Willelmus et alii nichil capiant per breve istud, set sint in misericordia pro falso clamio etc. (CP 40/60 m. 50d).

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[13] October 6, 1279.

[14] January 21, 1281.

[15] June 15, 1281.

[16] April 10, 1284.

XI. 1286

Convictum est per juratam in quam Stephanus de Wyghenhal' capellanus querens et magister Gregorius de Ponte Fracto se posuerunt, quod idem Stephanus et quidam Willelmus Hell' inplacitati fuerunt in curia christianitatis coram magistro Gregorio de quodam laico contractu et idem Willelmus Hell' detulisset eidem Gregorio regiam prohibitionem per quod placitum predictum cessavit, idem magister Gregorius iterato traxit predictum Stephanum capellanum coram eo imponendo ei quod ipse impetravit prohibitionem predictam cum clericus esset, et ipsum vexavit injuste quousque cepisset ab eo viginti solidos et turbas ad valenciam dimidie marce, cum paratus esset se purgare quod regia prohibitio per ipsum inpetrata non fuisset nec eidem Gregorio obtenta. Et similiter quod idem magister Gregorius postmodum procuravit magistrum Johannem de Feryby ipsum inplacitare pro predicto facto maliciose et ipsum vexare quousque cepisset ab eo viginti solidos. Et ideo consideratum est quod predictus Stephanus predictos viginti solidos et dimidiam marcam et dampna sua que taxantur ad dimidiam marcam versus predictum magistrum Gregorium. Et Gregorius in misericordia. (*Assise Roll* 573 m. 103).

XII. 1286

Bartholomeus de Burle queritur de magistro Henrico Sampson de hoc quod idem Henricus in ultima visitatione archiepiscopi Cantuariensis[17] anno regni regis nunc septimo[18] ipsum coram archiepiscopo et commissariis suis citare fecit videlicet primo die apud Kenighale, secundo die apud Lopham, tertio die apud Mortelak, quarto die apud Lamphate, quinto die apud Merlawe,[19] exigendo ab eodem centum et triginta marcas de debitis et catallis que non fuerunt de testamento vel matrimonio et postmodum cum ipse detulisset ei regiam prohibitionem videlicet die Jovis proxima ante festum Ascensionis Domini anno predicto[20] idem magister Henricus nichilominus dictum placitum secutus fuit coram ordinariis predictis et ipsum excommunicare fecit contra prohibitionem predictam in contemptum domini regis ad dampnum ipsius Bartholomei viginti librarum et inde producit sectam etc.

Et magister Henricus venit et defendit vim et injuriam quando etc. et dicit quod revera ipse vendidit cuidam Willelmo de Colneye fructus unius anni ecclesie sue de Walsham pro centum et triginta marcis de quo debito idem Batholomeus exstitit plegius et principalis debitor ob quod in visitatione predicti archiepiscopi ipsum Bartholomeum citare fecit coram predicto archiepiscopo et commissariis suis eo quod non satisfecit de debito predicto; sed revera dicit quod postquam regia prohibitio ei delata fuit numquam ulterius secutus fuit placitum predictum et quod ita sit petit quod inquiratur; et Bartholomeus similiter. Ideo fiat inde jurata.

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[17] John Pecham (1279-1292).

[18] November 20, 1278 to November 19, 1279.

[19] These places are all parishes in Norfolk, Surrey and Middelsex where the archbishop stopped in the course of his visitation.

[20] May 4, 1279. There must be some error in the year of the reign, since Archbishop Robert Kilwardby, Pecham's predecessor, left England in 1278, while Pecham himself did not arrive until June 4, 1279; see Hilda Johnstone, 'Pecham and the Council of Lambeth' *Essays in Mediaeval History Presented to T. F. Tout* (London, 1925), p. 174.

Jurati dicunt super sacramentum suum quod predictus magister Henricus postquam regia prohibitio ei delata fuit, ut predictum est, nichilominus infra quindenam proximam sequentem iterato ipsum summonire fecit coram commissariis ipsius archiepiscopi per duas vices, unde dicit quod post prohibitionem predictam idem magister Henricus secutus fuit placitum predictum. Et quia predictus magister Henricus cognovit quod secutus fuit placitum predictum in curia christianitatis cum non fuerit de testamento nec matrimonio et etiam quia convictum est per juratos predictos quod secutus fuit placitum predictum post prohibitionem regiam ei delatam, consideratum est quod predictus Bartholomeus recuperet dampna sua que taxantur per juratos ad sex marcas. Et magister Henricus custodiatur. Dampna sex marcarum; unde medietas clericis. (*Assise Roll* 573, m. 106).

XIII.[21] Ca. 1285

Writ: Le rey saluz G. de N. Nus vus comandons que vus ne siwet ple en cort crestiene de chateus ou de dettes, dunt J. de C. se pleint que vus le treez en plai en cort crestiene, sanz ceo que les chateus ou les dettes seient de testament ou de matrimoine, pur ceo que les plez de chateus e de dettes que ne sunt de testament ou de matrimoine apendent a nostre corone e a nostre dignite. T. etc.

Commentary: Ceo fet a saver que meime le bref deit le pleintif aver al ordinare qu'il ne teigne le plai; e son adversaire suit le ple ou le ordinare teigne le ple, dunques avera il un bref les par gage e sauves pleges qu'il seient devant justicers a certein jor a mustrer pur quai il alerent encontre la defense le rey.

Ceo est a saver que ceo bref deit estre pleide par atachement e par destresces cum bref de trespas.

Pleading: Ceo vus mustre J., que ci est, que G., que la est, a tort ad siwi plai en cort crestiene de chateus encontre la defense nostre seignur le rey e pur ceo a tort que la ou il enpleda de .XL. sols de dette que ne fu de testament ne de matrimoine devant teu juge, e il porta la defense nostre seignur le rey qu'il ne siwi mes le ple le lundi plus prochain apres la Trinite l'an .XIII. en la eglise Nostre Dame de N. devant clers et lais, que la furent, nomeement A. B. C. D. e le defendi par le rey qu'il ne siwit mes le plai; il ne lessa mie pur ceo qu'il ne siwi le ple dequ'atant qu'il fu mis hors de eglise e escomenge par sa siwte a son damage de .X. livres. Si il le vot dedire, etc.

G. defent tort e forz e ses damages etc. a que unques plai ne siwi en cort crestiene, apres la prohibicion nostre seingur le rey li vint, ceo defent il tut outre encontre li e encontre sa suit.

Commentary: E s'il puis mustrer que les chateus qu'il demande seient de testament ou de matrimoine il purra bien avoer la suite devant la prohibicion e apres.

E fet a saver que par meimes les moz contera vers li pus qu'il ad son ple, e par meime la reson se pot il defendre. (British Museum, *Additional Manuscript* 38821, fol. 58).

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[21] This document contains in the thirteenth century French of the courts the form of a prohibition *de catallis*, the formulae used by litigants in pleading and a commentary on both by an anonymous author.

Robert Courson on Penance

V. L. KENNEDY C.S.B.

I. *INTRODUCTION*

STUDENTS in the field of the history of penance find many essential texts lacking for their work. This is particularly true of that period which extends from the middle of the twelfth century to the Fourth Council of Lateran (1215). It was during this period, or more precisely during the last quarter of the twelfth and the early years of the thirteenth centuries, that there flourished at Paris a school of moral theologians who applied the principles of theology and canon law to the problems of penance and who illustrated those problems with practical applications.[1] Outstanding among these were Peter Cantor and his disciple Robert Courson.[2] The teaching of Cantor is known to some extent from his *Verbum Abbreviatum*,[3] but his unedited *Summa de sacramentis et animae consiliis*[4] is a far more important work for the history of penance. Robert Courson's unedited *Summa*[5] is of equal, if not of greater value, for penitential ideas and practices during this period. It was these two men and the commentators[6] on Gratian's *Decretum* who supplied the material for the penitential handbooks of the thirteenth century. We have already shown how Peter of Roissy made use of these and other sources to compose his *Manuale*.[7] Subsequent research, we are confident, will show that the same is true of the penitential handbooks of Peter of Poitier,[8] canon of St. Victor's and Robert of Flamborough,[9] penitentiary of the same Abbey of St. Victor. We understand that Peter Cantor's *De sacramentis* is being prepared for publication. Robert Courson's *Summa* was to have been edited by Marcel Dickson but his untimely death put an end to that project.

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[1] Cf. M. Grabmann, *Die Geschichte der scholastischen Methode* II (Freiburg i. B., 1911), pp. 478 ff. J. de Ghellinck, *Le mouvement théologique du XII^{e} siècle* (Paris, 1914), pp. 338-346. V. L. Kennedy, '*The Handbook of Master Peter Chancellor of Chartres*', *Mediaeval Studies* V, 1943, 10.

[2] We perhaps take liberties in calling him Robert Courson instead of Robert of Courson. Modern writers name him: Robert de Courçon, de Courson, de Curzon, or Robert Curzon. In mediaeval times he is called indiscriminately: Robertus de Corceone, de Corson, de Corchon, de Corcione, de Curcone, de Curcun, de Cursim, de Cortchum, de Corschon, de Corcon.

[3] PL 205, 23-370.

[4] It is found in the following manuscripts: Paris *B.N. Lat.* 9593, 14,521; Troyes, *Bibliothèque de la ville*, 276; Rein, *Stiftsbibliothek* 61.

[5] A tentative list of the manuscripts: (as given by P. Glorieux, *Répertoire des maîtres en théologie de Paris au XIII^{e} siècle* (Paris, 1933), no. 103) *Arras* 62; *Bruges* 247; Paris *B.N. Lat.* 3202, 3258, 3259, 14524, 3495 (fr.); *Rouen* 656; *Troyes* 1175; London, *British Museum King's* 9 E, XIV; Cambridge, *Gonville and Caius* 151, 331; *Escorial* C. IV, 14.

[6] For the enormous amount of unedited material in this field, one has only to glance through: Stephan Kuttner, *Kanonistische Schuldlehre von Gratian bis auf die Dekretalen Gregors IX* (Studi e Testi 64, Città del Vaticano, 1935).

[7] 'The Handbook of Master Peter', *Med. Studies*, V (1943), 7-16.

[8] A. Teetaert, 'Le "Liber Poenitentialis" de Pierre de Poitiers', *Beiträge zur Geschichte der Philosophie und Theologie des Mittelalters*, Supplementband III, 1, 1935, 310-331.

[9] Cf. Stephan Kuttner, 'Pierre de Roissy and Robert of Flamborough' *Traditio*, II (1944), 492-499. In this article Dr. Kuttner has shown that the Penitential of Robert of Flamborough was used by Peter of Roissy, and he has cleared up a difficulty in dating the career of Peter as chancellor at Chartres. We are indeed grateful to Dr. Kuttner for adding this information to our own study on this little known writer. However when Dr. Kuttner endeavors to show that Peter could not have exercised the office of confessor while at Paris on the grounds that he did not have the care of souls, we must disagree with him, and in particular with the statement that 'the administration of the sacrament of penance was strictly parochial before the time of the mendicants' (p. 498, note 36). Bernold of Constance writing towards the end of the eleventh century states in his *De presbyteris*

While working in this field for the past few years we have constantly felt the need of these texts. It is in the hope that Courson's text may be of value to other students, as well as our own, that we attempt to give here a readable, but not a critical, text of the first three sections of Courson's treatise on penance, i.e. the first fifteen chapters of his *Summa*. In these sections he deals with penance in general, the remedies of sin and the manner of imposing satisfaction on the penitent. In a subsequent issue of this periodical we hope to continue this text and to publish the sections on the 'keys', excommunications, simony etc.[10]

The career of Robert Courson has been competently treated by Marcel and Christine Dickson.[11] They have shown that his teaching career at Paris extended from 1204 to 1210;[12] it was during this time that he composed his *Summa*, probably between 1204 and 1208.[13] These scholars have also pointed out the importance of the role played by Courson in the various reforms, initiated by Innocent III, which culminate in the Fourth Council of the Lateran;[14] and they have indicated briefly how the doctrine of Courson's *Summa* is, on some points at least, incorporated into the decrees of the councils over which he presided when legate to France 1213 to 1215.[15]

For this edition of the first three sections of the *Summa* we follow the text of the manuscript *Bruges* 247 (B), and we give in the footnotes the variants from *Troyes* 1175 (T). When B is plainly defective we give the alternative reading in square brackets. We have followed exactly the spelling of B even though some words may look quite strange to modern eyes. The scribe sometimes spells a word with *ti*, sometimes with *ci*; in fact *contritio* and *contricio* appear on consecutive lines. The Bruges manuscript is written in an early thirteenth century hand with very few abbreviations. It contains 153 folios, 357 x 250 mm., two columns to the page with 43 lines in each column. This manuscript which is now located in the *Bibliothèque publique de la Ville* at Bruges came originally from the Abbey of Ter Doest; this is clear from the

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(MGH *Libelli de lite* II, 144-145): Solent enim episcopi ius reconciliandi sacerdotibus etiam a pastorali cura vacantibus sepenumero concedere, ut venerabilis papa Gregorius et sanctus Anselmus multis fecerunt, et adhuc quamplures faciunt. Hanc quippe concessionem nos ipsi ab ordinatione nostra suscepimus, hanc et alios quamplures a suis ordinatoribus percepisse non ignoramus.

Robert Courson deals with this problem in Chapter XII, c; while holding that the *proprius sacerdos* is normally the one to enjoin penance, he states that this right can be conferred *per speciale mandatum superioris ut episcopi, legati vel domini papae*, and he goes on to state that the Canons of St. Victor enjoy this privilege only through a special mandate of the bishop of Paris, cf. *infra* page 326.

We might note too that on page 497, n. 32, Dr. Kuttner proceeds to correct one of our texts: Duobus presbyteris [*rectius* pueris] . . . All that we can say on this is that the manuscript reads *presbyteris* and that the sense of the passage requires *presbyteris*.

[10] One section belonging to the treatise on penance has already been published: G. Lefèvre, *Le Traité de Usura de Robert de Courçon* (Travaux et mémoires de l' Université de Lille X, 30, Lille, 1902). For the rest of the *Summa*, the section on Extreme Unction will be found in: 'The Handbook of Master Peter', *Med. Studies*, V 1943, 16-21 in footnotes. Selections from the *Summa* have appeared in a number of modern studies, e.g. A. Landgraf, 'Kindertaufe und Glaube', *Gregorianum*, IX (1928), 370; 'Die frühscholastische Streitfrage vom Wiederaufleben der Sünden', *Zeitschrift für katholische Theologie*, 61 (1937), 582-583; 'Die Sündhaftigkeit der Lüge nach der Frühscholastik', *Zeitschrift für kath. Theol.* 63 (1939), 173-174. H. Weisweiler, 'Das Sakrament der Firmung in den systematischen Werken der Frühscholastik', *Scholastik*, VIII (1933); 'Das Sakrament der Letzten Oelung in den systematischen Werken der ersten Frühscholastik', *Scholastik*, VII (1932); V. L. Kennedy, 'The Moment of Consecration and the Elevation', *Mediaeval Studies*, VI (1944), 144-146.

[11] Marcel et Christine Dickson, 'Le Cardinal Robert de Courson. Sa Vie', *Archives d'histoire doctrinaire et littéraire du Moyen Age*, IX (1934), 53-142.

[12] *Ibid.* pp. 64-83.

[13] *Ibid.* pp. 67: 'composée en 1204-1208'; 'composée entre 1204 et 1207' p. 72. If it is true that Courson refers in his section on simony to the attempt of Milon de Nanteuil to buy his way into the archbishopric of Rheims, the date 1204 seems somewhat early; on this detail, cf. *ibid.* p. 75.

[14] *Ibid.* pp. 83-116.

[15] *Ibid.* pp. 124-127.

inscription on folio 152va: *Liber sancte Marie de Thosan.*[16] The *Summa* of Robert Courson, with the list of *capitula*, runs from folio 1ra to folio 152va. We have no complete description of the Troyes manuscript; the catalogue of the *Bibliothèque de Troyes* printed in 1855 gives a very poor analysis of it and wrongly assigns the treatise to Peter of Poitiers.[17] The original home of this manuscript was apparently the great Cistercian Abbey of Clairvaux. The *Summa* takes up the complete manuscript with its 229 folios; each page has two columns which vary in length from 40 to 44 lines depending on the hand. The first 187 folios are written in a gothic hand of about the middle of the thirteenth century; the last 42 folios are in a later hand, possibly as late as the turn of the century.

Both manuscripts give at the beginning a long list of chapter and paragraph headings. These vary widely in the two manuscripts; since they are the work of scribes and not of the author, we have not thought it worth while to publish them. The titles which we use for our subdivisions are taken, for the most part, from the list in B; we place them in square brackets since they do not come in the text proper. The three sectional headings and the numbering of the chapters correspond to the those given at the top of the folios in B.

Courson's method of expounding a problem is that of his time.[18] He states the question (*questio*), then presents the objections (*obiectio*); sometimes there is only one objection, sometimes a whole series, the final one of the series is generally an *obiectio sed contra*; finally he states his solution (*solutio*) in which he gives his own position and answers the objections. The system, as used by our author, is at the middle point of its development; that is midway between the *sic et non* of Abelard and the perfect form of the scholastic method as found in the works of St. Thomas.[19] In the Bruges manuscript, the headings *questio* and *obiectio* are given in the margin, *solutio* in the text. To indicate this distinction, we italicize the first two and print *solutio* in small capitals.

The sources used or quoted by Courson have been checked with reasonable care; this part of the work has been largely done by two students of the Institute, Father Nicholas Haring P.S.M. and Father Francis Firth C.S.B. Without their help it would have been quite impossible to publish this text in the present issue. We do not pretend that all of Courson's sources have been found; in fact we are quite convinced that no one can be sure of all the sources used by an author in this period in view of the large number of unpublished works in theology and canon law which were written between 1150 and 1200.[20] We have given a few references to one of these, the *De sacramentis* of Peter Cantor, but we have not been able to exploit it fully. Courson refers occasionally to his master Cantor but like all mediaeval writers he used the works of his predecessors freely without acknowledgment. His references to the Fathers are sometimes quite exact and sometimes completely false; this is particularly true of St. Augustine. He saddles the bishop of Hippo with many a saying that belongs to writers of a much later date.[21] Like Gratian and Lombard before him, and St. Thomas after him, he quotes freely from a *Liber de poenitentia* ascribed to St. Augustine. Generally this is the pseudo-augustinian treatise *De vera et falsa poenitentia*,[22] but not always. Apparently there was in circulation at that time a collection of Augustinian texts which went under such titles as: *Liber de poenitentia*,[23] *De remedio poenitentiae*,[24] *Liber de medecina poenitentiae*.[25] So far as we can determine, this book contained selections from Augustine's *Sermo* 351,[26] *Enchiridion*,[27] and *Tractatus in Joannis Evangelium*,[28] and probably considerable pseudo-augustinian material. We regret that neither time nor space permits us to list the *auctoritates* used in this section of the *Summa*; we may perhaps be able to remedy this deficiency at a later date.

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[16] A. De Poorter, *Catalogue des manuscrits de la bibliothèque publique de la Ville de Bruges* (Paris, 1934), pp. 288-289.

[17] *Catalogue général des manuscrits des bibliothèques publiques des départments* II, *Bibliothèque de Troyes* (Paris, 1855), p. 486.

[18] Cf. M. Grabmann, *Geschichte der scholastischen Methode* II (Freiburg, 1911), pp. 493 ff.

[19] Cf. G. Paré, A. Brunet, P. Tremblay, *La renaissance du XII^{e} siècle. Les écoles de l'enseignement* (Paris - Ottawa, 1933), pp. 274 ff.

[20] For theology and in particular the scriptural gloss, cf. B. Smalley, 'Gilbert Universalis and the problem of the Glossa Ordinaria', *Rech. de Théol. Anc. Méd.* VII (1935), 235-262; VIII (1936), 24-60; 'La Glossa Ordinaria' *ibid.* IX (1939), 364-400; etc. The amount of unedited material used in the articles cited in note 10 above is the best proof of our statement.

For the field of canon law, cf. Stephan Kuttner, *Repertorium der Kanonistik* (1140-1234). *Prodomus Corporis Glossarum* I (Studi e Testi 71. Città del Vaticano, 1937.)

[21] An example of this would be the definition of penance in Cap. 1 *a*, ascribed to Augustine which is really Lombard's.

II. *TEXT*

(fol. 4^{va}) *In nomine sancte et indiuidue trinitatis: Incipit summa magistri Roberti de Cortchum*.[1]

Tota celestis phylosophia in[2] bonis moribus consistit et fide, et quicquid amplius est a malo est; in qua ut dicit Gregorius nichil ad plenum intelligitur nisi dente disputationis frangatur.[3] Unde ad teneram rudium erudiendam infantiam qui tanquam adhuc edentuli ad hostium pulsant theologie et ad cibum solidiorem prouectiorum frugalius percipiendum, questiones morales et tam de fide quam de ceteris uirtutibus institutas pro posse nostro deo annuente prosequemur. Sed quia tam preco domini scilicet Iohannes Baptista quam ipse dominus in principio doctrine sue predicationis a penitentia exortus est dicens: *Penitentiam agite quia appropinquabit regnum celorum*,[4] ideo et nos a penitentia incipientes primo morales questiones, secundo de fide institutas succincte et summatim prosequi proposuimus. Morales siquidem questiones sunt que docent quid appetendum, quid fugiendum,[5] et qualiter in medio huius praue et peruerse nationis[6] sit commorandum; huiusmodi sunt ille que sunt de penitentia, de reditu peccatorum, de clauibus, de excommunicatione, de restitutione, de scandalo, de symonia, de uoto, de matrimonio, de baptismo, de eucharistia, de premiis electorum, de suppliciis damnatorum.[7]

[I DE PENITENTIA.]

Videndum ergo quid sit penitentia, quid penitere, que exigantur ad hoc quod quis uere[8] peniteat, et que sint opera, et qui casus ambigui, et que remedia penitentie.

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[22] PL 40, 1114-1130; quoted as *Liber de poenitentia* in *Decretum, De poen.*, D. 3, c. 32; *ibid.* c. 42; *ibid.* D. 5, c. 1; *ibid.*, D. 6, c. 1.

[23] So quoted in: Cap. IV of Courson's *Summa*; also St. Thomas, *Summa Theol.* 3, 90, 4.

[24] So quoted in: *Decretum, De cons.*, D. 2, c. 47; *S. Theol.* 3, 80, 3.

[25] So quoted in: *Decretum, De poen.*, D. 1, c. 63; this is also quoted as *Sermo de poenitentia.* In the Antwerp 1757 edition of Lombard's *Sentences*, reference is made to this book on p. 485, where it is indicated that this *Liber de medecina poenitentiae* is to be found in volume 9 of the works of St. Augustine, but since we have no earlier edition than that of the Maurists, who discarded this work as inauthentic, we have been unable to check this. Apparently some one of these collections corresponds to the prologue of a penitential, which was composed of sayings of St. Augustine. Reference is made to this by Fronto in his edition of the *Decretum* of Ivo of Chartres (PL 161, 861 n. 124). The prologue is published in: D'Achery, *Spicilegium* I (Paris, 1732), pp. 510-512.

[26] PL 39, 1335-1349.

[27] PL 40, 231-290.

[28] PL 35, 1379-1976.

[1] Title *om.* T.

[2] in bonis . . . fide—in duobus consistit scilicet bonis moribus et fide T.

[3] Not found in Gregory's works, but it is given, without any reference to Gregory in: Peter Cantor, *Verbum Abbreviatum* 1, 2: PL 205, 25.

[4] Cf. *Matt.* iii, 2; iv, 17.

[5] Cf. Cicero, *De officiis* I, 28; Seneca, *Ep.* 121, 3.

[6] Cf. *Phil.* ii, 15.

[7] reproborum T.

[8] et digne *add.* T.

[Caput I. *a. Quid sit penitentia, quid penitere.*]

Penitentia est, teste Augustino, gratia qua mala commissa emendationis proposito plangimus et odimus et ea ulterius committere nolumus.[9] Unde Ieronimus: Penitentia (fol. 4^{vb}) est secunda tabula post naufragium[10] cum baptismus[11] prima tabula qua peruenitur ad portum salutis.

Penitere autem est, ut ait Ambrosius, preterita mala plangere et plangenda ulterius non committere.[12] Quod Gregorius aliis uerbis proponens[13] ait: Penitere est ante acta flere et flenda ulterius non committere.[14]

Obiectio. Sed obicitur: Esau, ut dicit apostolus ad Hebreos,[15] non impetrauit ueniam quamuis lacrimis eam petierit.[16] Preterea multi dignam agunt penitentiam et tamen nec presentialiter plangunt nec se in lacrimis effundunt. Sic ergo non uidetur conuertibilis descriptio.

SOLUTIO. Esau ideo non optinuit ueniam quia inuidia fratris ductus et non in caritate fundatus fleuit. Nec dicimus quod conuertibilis sit descriptio sed qualiscumque assignatio. Ex[17] dictis patet quid sit penitentia, quid penitere.

[*b. Quid exigatur ad hoc quod quis peniteat.*]

Ad hoc autem quod quis uere et digne peniteat, tria debet attendere: preterita commissa que defleat, presentia ut que[18] contemnat, futura ut que[18] precaueat ne recidiuet, et in omnibus dolorem cum gaudio et gaudium cum dolore misceat, ut in contritione sit dolor et amaritudo pro malis commissis et exultatio quia dominus cor eius ad penitentiam illustrauit. Unde Augustinus: Penitentis est cum dolore gaudeat et cum gaudio doleat et non semper doluisse doleat.[19] Complectitur autem penitentia tria sacrificia: cordis, oris et operis, quia non est sufficiens penitentia nisi assit cordis contritio, oris confessio, operis satisfactio. Unde apostolus: *Corde creditur ad iustitiam, ore autem confessio etc.*[20]

[c. *Utrum qui confessus est peccata et peregit opera penitentie sine caritate teneatur iterare.*]

Questio. Sed queritur de illo qui confessus est peccata omnia et planxit ea et ulterius ea nec alia[21] committere proposuit, utrum ipse omnia[22] teneatur iterare si omnia opera peregit sine caritate; quod sic uidetur.[23]

Obiectio. Omnia opera que ipse sine caritate fecit mortua erant et confessio eius existentis sine caritate similiter mortua erat; ergo omnia illa pro infectis habenda sunt cum nichil ualuerint (fol. 5^{ra}) ei ad uitam eternam, ergo omnia sunt iteranda.

Obiectio. Sed contra. Esto quod modo infundatur ei gratia; ex huius gratie infusione reuiuiscunt predicta que mortua erant. Quod probatur per baptismum; quia si aliquis ficte accedat ad baptismum non tollitur peccatum originale nec actuale, sed caracter tantum ei imprimitur. Si autem superueniet gratia, incipit in eo habere effectum baptismus precedens ut tollat et originale et omne peccatum eius actuale. Eadem ratione superinfusa gratia in penitentia reuiuiscere facit omnia opera premortua in non habente caritatem; uel assigna quare aliter accidat in baptismo quam in penitentia. Item si tu[24] confiteris in caritate omnia peccata sufficienter remittuntur tibi. Si autem postmodum reducas ad memoriam aliquod peccatum uel aliquid quod nesciebas esse mortale peccatum in confessione teneris illud confiteri. Quare? Quia in se est et erat mortale peccatum. Eadem ratione si in precedenti confessione tua, te non habente caritatem, fuerunt omnia mortua, et tu modo scias quod mortua fuerunt, iterum teneris illa confiteri et omnia opera illa iterare que facta sunt sine caritate; ergo si iniuncta fuerunt tibi peregrinatio a sacerdote et longa ieiunia, licet ea peregeris, debes tamen illa iterare ut in caritate fiant.

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[9] *Sent.* IV, 14, 2; Quaracchi II, 821. No reference to Augustine.

[10] *Ep.* 130 *ad Demetr.* 9; PL 22, 1115. *Sent.* IV, 14, 1; Quaracchi II, 820.

[11] sit *add.* T.

[12] Ps. Ambrose, *Sermo* 25 *de s. quadragesima* 9; PL 17, 677. *Sent.* IV, 14, 2; Quaracchi II, 820. *Decretum, De poen.*, D. 3, c. 1.

[13] exponens T.

[14] *Sent.* IV, 14, 2; Quaracchi II, 820; Cf. Gregory, *Hom. in Evang.* II, 34; PL 76, 1256. *Decretum, De poen.* D. 3, c. 6.

[15] *Hebr.* xii, 17.

[16] petunt T.

[17] iam *add.* T.

[18] que *om.* T.

[19] Ps. Augustine, *De vera et falsa poenitentia* 13, 28: PL 40, 1124. *Sent.* IV, 14, 2; Quaracchi II, 820. *Decretum, De poen.* D. 3, c. 5.

[20] *Rom.* x, 10.

[21] talia T.

[22] necessario *add.* T.

[23] mortua opera nunquam reuiuiscunt *add.* T.

SOLUTIO. Illud est generale et inconcussum quod si aliquod opus semel fuerit mortuum nunquam reuiuiscere potest. Unde si aliquis peregerit multa opera penitentie sine caritate, illa nullomodo possunt reuiuiscere per aliquam gratiam subsequentem, nec illa ei ualuerunt ad habendam uitam eternam, licet ad maiorem habilitatem et ad bonum temporale et ad mitigationem pene.[25] Secus autem est de sacramento baptismatis et de sacramento penitentie. In baptismate enim duo sunt consideranda, caracter scilicet signaculum quoddam anime impressum quo baptizatus signatur et ascribitur numero fidelium ut sit de ecclesia nomine et numine vel saltem nomine,[25a] (fol. 5^{rb}) et insuper effectus baptismi in illo qui digne accedit per quem tollitur omnis reatus. Unde aliquis cum ficte accedit ad baptismum, recipit caracterem; sed adveniente noua gratia sortitur effectum baptismus et tollitur omnis culpa. Sed ista duo non sunt in penitentia quia, ad hoc quod uigorem et effectum habeat, preexigitur ut assit contritio ex qua infunditur gratia sine qua nec eius confessio nec satisfactio ualet ad meritum uite eterne.

Si autem queratur utrum omnia sint iteranda que facta sunt sine caritate, respondeo esse distinguendum quia aut ieiunium aut aliquid tale quandoque assumitur ab aliquo propter carnis macerationem, non habito respectu ad aliquam suppletionem penitentie, quandoque uero iniungitur a sacerdote in remedio penitentie secundum qualitatem criminum et auctoritatem patrum.[26] In primo casu non sunt iteranda opera sed in secundo iterare debent quia cum iniuncta fuerint a sacerdote oportet quod fiant in caritate. Si autem aliquis confiteatur sacerdoti et non sit in caritate et postmodum habeat caritatem, non tenetur iterare omnem confessionem peccatorum prehabitam sed tenetur dicere, quando habebit caritatem, quod confessus fuit extra caritatem; si hoc sciat et non tenetur omnia confessa iterare, tamen bonum est si iteret.

[*d. Quod deus non pensat factum sed affectum.*]

Obiectio. Item deus non pensat factum sed affectum,[27] unde contingit in articulo mortis[28] quod si aliquis uult baptizari baptizatur; si communicare communicat scilicet si non potest percipere eucharistiam; eadem ratione si aliquis uult penitere, penitet. Inde sic: si iste uult penitere, penitet.[29] Iste scit quod hoc sequitur ad illud et scit primum, ergo scit illatum, ergo scit penitere. Sed si penitet, habet caritatem; ergo iste scit se habere caritatem. Item hic est locus a descriptione; iste commissa plangit et plangenda amodo se non proponit committere; ergo penitet. Iste scit hanc argumentationem esse neccessariam et scit primum, ergo scit illatum, ergo scit se penitere, et ita scit se habere caritatem.

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[24] tu *om.* T.

[25] profuerit *add.* T.

[25a] This definition of character is quoted by: F. Brommer, *Die Lehre vom sacramentalen Character in der Scholastik* (Paderborn, 1908), p. 16, n. 3.

[26] *Sent.* IV, 16, 3; Quaracchi II, 842. *Decretum, De poen.*, D. 5, c. 6. (Gregory VII in Concilio Romano V.)

[27] Gregory, *Hom.* V *in Evang.* PL 76, 1093; cf. Robert of Melun, *Questiones de epistolis Pauli;* ed. Martin p. 217.

[28] mortis *om.* T.

[29] inde . . . penitet *om.* T.

SOLUTIO. Constans est si aliquis uult se penitere peniteat. Sed hec falsa: iste scit se uelle penitere, quia hoc (fol. 5^{va}) non posset scire nisi plena uoluntate et condita caritate. Ad sequens dicimus quod illa argumentatio apparet esse necessaria, sed hec est falsa: iste scit primum huius argumentationis; hoc enim non posset scire nisi sciret se esse iustum.

[Caput II. *e. Utrum penitens teneatur proponere se non commissurum uenialia. Utrum sacerdos teneatur hoc ei iniungere.*]

Questio. Item queritur de uenialibus utrum scilicet penitens teneatur proponere se non de cetero commissurum uenialia et utrum sacerdos teneatur hoc ei iniungere; quod uidetur iuxta illud Gregorii: Vitasti grandia, caue obruaris harena,[1] id est multitudine uenialium.

Obiectio. Si iniungat ei sacerdos ut proponat de cetero se non committere uenialia, probo quod indiscrete ei penitentiam iniungit quia sine uenialibus nec etiam puer unius diei uiuere potest super terram nec primis motibus potest aliquis resistere cum dicat apostolus: *Si quod nolo hoc ago, non ego facio sed quod habitat in me peccatum.*[2]

SOLUTIO. Ideo dicimus quod cum nullus in hoc corpore abstinere possit a uenialibus, sacerdos non debet iniungere penitenti ne de cetero committat uenialia cum hoc ei sit impossibile. Sed premonendo potest ei dicere: Attende ne incurras grauiora uenialia que designantur non per stipulam sed per fenum et lignum[3] ne occasione uenialium incurras mortale.[4]

[*f. Utrum aliquis ante acta deflens et flenda non committere proponens et dubitans si sit in caritate debeat in die sollemni ad corpus Christi accedere.*]

Questio. Item esto quod aliquis ante acta defleat et de cetero se non committere flenda proponat et hoc in firmo proposito accedat in die sollemni scilicet die pasche ad corpus Christi recipiendum in facie ecclesie et consulat te, sacerdos, utrum scilicet recipiet eucharistiam necne et reuera dubitat utrum sit in caritate, quid respondebis?

Obiectio. Si dicas quod recipiat corpus Christi, probo quod male, quia dubia asseris pro certis; quia dubium est si est in caritate et constat quod si non est in caritate corpus Christi sumendo *iudicium sibi manducat et bibit.*[5] Si dicas ei ut non recipiat eucharistiam, omnes iam scandalizabuntur per eum et tunc *expedit ut mola asinaria suspendatur in collum eius et demergatur in profundum maris.*[6]

Obiectio. Preterea remoueamus consilium sacerdotis[7] et queritur quid isti vel etiam (fol. 5^{vb}) tibi in tali articulo consuleres; quidquid respondes sequitur inconueniens ut prius. Preterea si iste, tui vel sacerdotis consilio, omittat accedere quia predicto modo dubitat, eadem ratione nec in anno sequenti accedet nec in tercio nec etiam in morte cum semper perseueret in tali hesitatione. Sed iterum uidetur posse ostendi quod quilibet in tali articulo sibi sciat de facili consulere. Quilibet enim aut habet caritatem aut non. Si iste ergo habeat caritatem, uidetur quod se sciat habere caritatem sic: caritas nunquam est otiosa;[7a] [immo[8]] habe caritatem, ut dicit auctoritas, et fac quod[9] uis.[10]

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[1] Not found in Gregory's works; cf. Peter Manducator, *Sententiae de sacramentis*, ed. Martin p. 74.* The exact expression is in: Peter Cantor, *De sacramentis* I, 72; *Troyes* 276, fol. 59^{va}.

[2] *Rom.* vii, 17.

[3] Cf. I *Cor.* iii, 12; for another interpretation cf. Peter of Poitiers, *Sent.* III, 5; PL 211, 1054.

[4] graviora T.

[5] I *Cor.* xii, 29.

[6] *Marc.* ix, 41.

[7] sacerdotis *om.* T.

Obiectio. Item Augustinus dicit: Tene radicem et tota arbor est in te; radix est caritas, tota arbor, congregatio uirtutum.[11] Si ergo habes caritatem, habes spiritum scientie, sapientie et intellectus,[12] et omnem scientiam; et ita scis te habere caritatem sicut dicit auctoritas super illum locum: *qui sedes super cherubim moueatur terra:*[13] Interroga cor tuum utrum habeas caritatem quam qui habet, quid est quod nescit;[14] quasi diceret nichil.

Obiectio. Item qui est radicatus in caritate dicat cum Paulo: *Neque mors neque gladius neque altum neque profundum separabit me a caritate que est in Christo Iesu:*[15] et cum apostolis in Actibus Apostolorum: *Amodo non possumus non eloqui que audiuimus.*[16]

Obiectio. Preterea *caritas est plenitudo legis*[17] in qua[18] omnis scientia; qui ergo habet caritatem habet plenitudinem legis et scientie, quia dicit auctoritas: Qui plus diligit, plus cognoscit.[18a] Sic ergo caritas non permittit possessorem suum ignorare se esse in caritate et ita quicumque habet caritatem scit se esse in caritate; ergo si tu es in caritate, tu in predicto articulo scies te habere caritatem et digne accedere ad eucharistiam.

Obiectio. Sed contra, iterum uidetur quod in tali articulo non debeat accedere nec presumere se habere caritatem sic: Apostolus ait *nichil mihi conscius sum sed in hoc non iustificatus sum.*[19] Item idem ait: *Sobrie, pie et iuste uiuamus in hoc seculo;*[20] ubi exponens Augustinus ait: Sobrie quo ad te, pie quo ad dominum (fol. 6^{ra}) iuste quo ad proximum, scilicet neminem facias miserum et neminem deferas in miseria;[21] iuxta illud: *Diuerte a malo et fac bonum.*[22] Similiter dicit auctoritas quod iste sunt due partes iustitie; neminem facere miserum, neminem deserere in miseria.[23] Sed quis est qui sciat se implere hec duo, scilicet ut neminem faciat miserum ei molestiam uel iniuriam inferendo, et quod neminem deserat in miseria, scilicet ei non per omnia que potest subueniendo. Si enim ei, cum indiget, non exhibet quecumque potest, scilicet aduocationem, consilium, refectionem spiritualem et corporalem, et etiam omnia que sibi uellet impendi, nonne deserit eum in miseria cum teneamur diligere sicut seipsum?

Obiectio. Videtur itaque quod quasi impossibile sit quod iuste uiuat quo ad proximum cum sicut dicit Iacobus: *In multis offendimus,*[24] et ut dicit psalmista: *Vix emundemur a delicto maximo,*[25] hoc est a derelicto scilicet[26] a tali omissione in subuentione proximi; et constans est quod si tu omittis in tali subuentione plus quam debes, non habes caritatem et tu nescis utrum hoc sit uerum, ergo nescis an habes caritatem, ergo nescis utrum debes accedere.

[7a] Cf. Peter Cantor, *Verbum Abbrev.* c. 95; PL 205, 274.

[8] nonne B.

[9] quicquid T.

[10] Hugh of St. Victor, *De sacramentis* II, 13; PL 176, 546. This seems to be a paraphrase of: *diliges et quod vis fac*; Augustine, *In Ep. Iohannis ad Parth.* 7, 8; PL 35, 2032.

[11] Cf. *Sermo* 72, 3, 4: PL 38, 468; *Sent.* III, 31, 1: Quaracchi II, 692.

[12] Cf. *Is.* xi, 2.

[13] *Ps.* xcviii, 1.

[14] Peter Cantor, *De sacramentis* I, 49; *Troyes* 276, fol. 27^{rb}; cf. Augustine, *Enarr. in Ps.* xcviii, 3: PL 37, 1260.

[15] Cf. *Rom.* viii, 38-39.

[16] et vidimus add. T. Cf. *Acta* iv. 20.

[17] Cf. *Rom.* xiii, 10.

[18] est *add.* T.

[18a] Expression not found. Cf. Augustine, *Tract. in Iohan.* 96, 4; PL 35, 1876.

[19] I *Cor.* iv, 12.

[20] *Ad Tit.* ii, 12.

[21] Peter Cantor, *De sacramentis* I, 49; *Troyes* 276, fol. 27^{rb}. Cf. P. Lombard, *Collectanea in Ep. B. Pauli*; *In Ep. ad Titum*; PL 193, 391.

[22] *Ps.* xxxiii, 15.

[23] Cf. Peter Cantor, *De sacramentis* I, 73; *Troyes* 276, fol. 62^{rb}.

[24] *Jac.* iii, 2.

[25] Cf. *Ps.* xviii. 14.

[26] sed T.

Obiectio. Quod iterum[27] auctore Ambrosii super illum locum euangelii: *Omni petenti te tribue*,[28] euidenter confirmatur ubi ait: Frustra manus ad deum tendit qui eas ad pauperes pro posse suo non extendit.[29] Sed constat quod tu non pro posse manus ad pauperes extendis cum possis tua uendere decreta uel quecumque alia habes citra [artum][30] necessitatis et longe effusius manus ad pauperes extendere, et nescis utrum in hoc mortaliter omittas, et ita nescis utrum sis in caritate et inde ut prius.

SOLUTIO. Hoc soluere difficillimum est; tamen nobis sine preiudicio uidetur hic dicendum quod sacerdos non debet iniungere alicui in predicto articulo constituto ut accedat ad eucharistiam; immo debet eum sue relinquere conscientie et proprio arbitrio et ei dicere ut attendat (fol. 6^{rb}) utrum in conscientia sentiat illum celestem saporem et iocunditatem quam affert caritas deuotis mentibus que non sinit in uere penitente obicere aliquam infectionem, sed dilatat cor[31] et statuit quasi in loco spacioso pedes,[32] id est affectus. Dicat ergo sacerdos: si tu tale quid sentis in corde, credo quod habes caritatem et quod digne potes accedere ad eucharistiam. Si autem de hiis nichil sentis in corde sed potius cor constrictum et coangustatum, aut cauteriatam habes conscientiam, non est in te signum quod habes caritatem uel *cor* uere *contritum et humiliatum*;[32a] et ideo periculosum est te in tali casu accedere ad eucharistiam. Hoc idem debet quilibet intra se attendere sine omni consilio sacerdotis in predicto articulo quia, si est in statu Pauli qui ait: *Scio quod neque mors neque gladius etc.*,[33] uel si inclinetur cor eius ad hoc quod credat se pro certo habere caritatem per predicta signa, accedat in tali pia dubitatione ad eucharistiam ter uel saltem in anno. Si autem contraria signa sentit in corde, consilium est sanius quod non accedat et ideo, si potest discrete, se subtrahat propter scandalum. Sit ergo interim in pia expectatione usquequo dominus per opera bona illius cor illustret ad ueram penitentiam,[33a] et cum hoc senserit, cum aliis accedat ad eucharistiam sed ante[34] non. Minus enim malum est ut scandalum oriatur quam ut ipse *sibi iudicium manducet et bibat*[35] et similis Iude proditori efficiatur de quo Ambrosius:[36] qui indigne sumit idem est ac si Christum interficiat. Ex predictis patet utrum ille qui nescit se in mortali debeat accedere ad eucharistiam.

[Caput III. *g. Quid sacerdos debeat consulere muto, ceco, surdo, maniaco accedentibus ad corpus Christi cum sint in mortali.*]

Questio. Consequenter queritur de illo qui mutus est, surdus, cecus, uel naturaliter est morio uel maniacus, quid sacerdos debeat ei consulere accedenti ad confessionem cum eum sciat in mortali. Iste talis cum sit surdus non recipit instructionem cum sit mutus non habet oris confessionem, cum sit cecus non potest[1] instrui per scripturam, cum sit morio id est naturaliter idyota uel maniacus, id est furiosus, nullam habet discretionem. Quid faciet sacerdos (fol. 6^{va}) cum animam eius plus teneatur diligere quam carnem propriam, teste

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[27] patet T.

[28] *Luc.* vi, 30.

[29] Not found in Ambrose's works, but without any reference to Ambrose in: Peter Cantor, *Verbum Abbr.* c. 79; PL 205, 237.

[30] artem B. (for *artum* i.e. *arctum*)

[31] Cf. *Ps.* cxviii, 32.

[32] Cf. *Ps.* xxx 9.

[32a] Cf. I *Tim.* iv, 2; *Ps.* i, 19.

[33] *Rom.* viii, 35-38.

[33a] *Decretum, De poen.* D. 5, c. 6. *Sent.* IV, 16, 3; Quaracchi 2, 842. (Greg. VII in Concilio Rom. V.)

[34] sed ante—aut T.

[35] I *Cor.* xi, 29.

[36] Cf. Ambrosiaster, *Comm. in Ep.* I *Cor.* xi, 27; PL 17, 256.

[1] habet T.

Augustino.[2] et eum cum sit parrochianus, scilicet filius spiritualis, plus teneatur diligere quam si esset eius filius carnalis? Preterea non inuenitur salus uel remedium ad uitam nisi in quinque: primo in Iobitis quibus remittebatur originale per sacrificium;[3] secundo in Iudeis quibus remittebatur peccatum per circumcisionem; tercio in hiis qui baptismalem obseruant innocentiam; quarto in hiis qui post lapsum baptismatis digne[4] accedunt ad penitentiam; quinto in quibus falce martyrii omnia resecantur.[4a] Sed nullum istorum remediorum istis potest assignari; quid ergo de talibus aget sacerdos?

[*h. De illo qui non habeat copiam sacerdotis utrum aliquod remedium salutis ei relinquatur.*]

Questio. Item non solum de hiis queritur sed etiam de illo quid non habet copiam sacerdotis nec alicuius[5] cui confiteatur, utrum scilicet ei reliquatur aliquod remedium salutis.

Obiectio. Videtur quod non quia ut ait Gregorius: Falsas dicimus esse penitentias que non secundum auctoritatem patrum pro qualitate criminum imponuntur.[6] Sed nec secundum auctoritatem sanctorum nec pro qualitate criminum imponitur isti penitentia qui decedit in nemore sine sacerdote;[7] ergo penitentia eius falsa est.

Obiectio. Item Ambrosius ait in libro de Paradyso: Non potest quisquam iustificari a peccato nisi fuerit peccatum ante confessus.[8] Item per Ysaiam dicit dominus: *Dic tu iniquitates tuas ut iustificeris.*[9] Item Iohannes Os Aureum: In corde perfecto penitentis est contricio, in ore confessio, in opere tota humilitas.[10]

Obiectio. Unde Augustinus in sermone domini habito in monte:[11] Triplici morti triplici remedio occurritur, contritione, confessione, satisfactione; quasi non suscitantur plene tres mortui scilicet peccatum cordis, oris, operis, nisi per triplex remedium cordis, oris, operis siue[12] consuetudinis; ergo si deest tercium[13] scilicet confessio oris non est plena, immo falsa, penitentia; ergo predictus qui sine confessione oris[13a] moritur cum nullum quinque predictorum remediorum habeat, non habet alquod remedium salutis.

Obiectio. Quo concesso contra: (fol. 6^{vb}) Deus non pensat factum sed affectum[14] nec aliquid querit ab homine ultra posse. Iste sacerdos in quantum potest ad deum conuertitur. Et ait dominus per Malachiam: *Conuertimini ad me et ego conuertar ad uos.*[15] Et per Ezechielem: *Quandocumque conuerterit se peccator a uiis suis malis omnium iniquitatum eius non recordabor amplius;*[16] et hoc facit iste; ergo nichil facit quod ei sit imputandum.

SOLUTIO. Ad primum dicimus quod cum sacerdos nichil omittat de contingentibus que spectant ad eius exhortationem et inuitationem penitentie circa surdum et cecum vel morionem aut maniacum quin eum nutu et signis ad deuotionem incitet, nichil est quod ei sit imputandum; iuxta illud Ezechielis: *Si annuntiaueris iniquitatem suam populo meo et ipse te non audierit, non requiram sanguinem eius de manu tua sed liberasti animam tuam.*[17] Cum ergo parrochianus talis sit quasi truncus ante sacerdotem, sicut non imputaretur ei de confessione trunci, ita nec confessione istius. Quid ergo faciet sacerdos? Ipse et populus orabunt pro eo ut dominus cor eius illustret ad ueram penitentiam[18] et deuotionem ut manifestetur gloria dei in tali sicut in ceco nato[18a] quia *cuius uult miseretur, et quem uult indurat*[19] et ideo ista *iudicia dei* nobis *sunt abyssus multa.*[20]

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[2] Cf. *De doctrina christiana* I, 27, 28: PL 34, 29.

[3] Cf. *Job* i, 5; for the first two *remedia*, cf. *Sent.* IV, 1, 8; Quaracchi II, 749. *Decretum, De cons.*, D. 4, c. 5. Gregory, *Moralia* IV, 3; PL 75 635.

[4] digne *om.* T.

[4a] Cf. Gennadius, *De eccl. dogmatibus* 74; PL 58, 997.

[5] alicuius *om.* T.

[6] *Sent.* IV, 16, 3; Quaracchi II, 842. *Decretum, De poen.*, D. 5, c. 6. (Greg. VII in Concilio Romano V.)

[7] Cf. I *Reg.* xxxiii, 13.

[8] *De paradiso* 14, 71; PL 14, 328; *Sent.* IV, 17, 1; Quaracchi II, 846. *Decretum, De poen.*, D. 1, C. 38.

[9] Cf. *Is.* xliii, 26.

[10] *Sent.* IV, 16, 1; Quaracchi II, 839. *Decretum, De poen.*, D. 3, c. 8; D. 1, c. 4.

[11] *Sent.* IV, 16, 1; Quaracchi II, 839; cf. Augustine, *In sermone Domini in monte* I, 12, 55; PL 34, 1247.

[12] si non T.

[13] remedium *add.* T.

[13a] non est plena . . . confessione oris *om.* T.

[14] Cf. Note 27, Cap. 1.

[15] Cf. *Mal.* ii, 7; *Zach.* i, 3.

[16] Cf. *Ezech.* xxxiii, 12-16; xviii, 21-24.

Ad sequens dicimus quod duplex est confessio oris; una de summitate labiorum, alia que est de labiis cordis interius. Sine altera istarum nunquam est salus illi qui recidiuauit post baptismum, et ideo dicimus de eo qui non habet copiam sacerdotis et tamen conteritur et confitetur de peccato suo soli deo quod in hoc saluatur. Similiter dicimus de eo qui uult communicare corpori Christi et non habet qui ei conferat; iuxta illud: Crede et manducasti.[21] Ad preinductas auctoritates que contrarie uidentur, dicimus quod non loquitur in hoc casu sed ubi qui potest habere copiam sacerdotis et[22] confiteri ore.

[Caput IV. *i. Quomodo possit cognosci uere penitens.*]

Sed adhuc (fol. 7^{ra}) non certificatur sacerdos quomodo possit cognosci uere penitens. Precurrendum itaque ad ea que docet Augustinus in libro de penitentia quibus elicitur quod quindecim gradibus[1] digne penitentie ascenditur in celestem Iherusalim, sicut sunt quindecim gradus psalmorum quibus ascendebatur in templum Salomonis.[1a] Gradus siquidem, teste Augustino, nichil est nisi profectus et ascendere nichil est nisi proficere.[2] Ille siquidem penitens qui dolet pro peccato et uerecundatur et se humiliat pro illo iam est in tribus gradibus. Nam in omni peccato precipue carius sunt tria: delectatio, impudentia et superbia; et contra hec, quia contraria contrariis curantur,[3] debet penitentia esse amara, uerecunda et humilis. Sed quia coacta seruicia non placent deo[3a] nec illa que fiunt contra unitatem ecclesie, exiguntur in penitente alii duo gradus, scilicet ut sit uoluntaria, id est ex deuotione mentis procedens; ut sit fidelis, id est in fide ecclesie et non secundum doctrinam hereticorum. Et quia nec genus nec species nec indiuidualem peccati notitiam debet omittere, ideo coexiguntur adhuc tres gradus: ut sit generalis comprehendens omnes genera peccatorum, sic confiteor omnia peccata; et specialis comprehendens omnes species peccatorum, ut confiteor de adulterio; et indiuidualis ut per indiuidua fiat confessio, ut confiteor de hac fornicatione.

Preter hos octo gradus, coexiguntur adhuc septem scilicet ut sit uera, hylaris, morosa, propria et accusatoria, frequens et integra. Vera: ut nichil falsitatis admiscens, nichil omittens de contingentibus, immo omnia nude et aperte prout gesta sunt confiteatur. Hylaris: ne fiat cum tristicia que, teste apostolo,[4] mortem operatur. Morosa: ne in transcursu fiat, sic ego commisi hoc peccatum et hoc et hoc et hoc, ad modum cambitoris nummos numerantis; immo ut acutius pungant[4a] et eum magis conterant cum maxima diligentia et morositate perscrutata euomantur. Propria: ut non alium (fol. 7^{rb}) sed se tantum confitens accuset iuxta illud: *Deus meus uitam meam annuntiaui tibi,*[5] quia si alium accuset non fratris correptor sed proditor.[5a] Accusatoria: ut dicat peccatum ex propria malicia patratum se in hoc plurimum accusando, et non pretendere[6] excusationem in peccatis sicut primi parentes. Frequens: ut quotiens cadit peccator tociens per penitentiam resurgat et non sicut rusticus qui de anno in annum differt penitere, cum, ut dicat Ieronimus, omne peccatum quod non per penitentiam statim diluitur suo pondere ad aliud trahit.[6a] Integra: ne sit diuisa per plures sacerdotes more eorum qui quedam uni, alia magis enormia alii, confitentur sacerdoti;[7] et ut comprehendat omnes peccatorum substantias et omnes circumstantias; et cum discretione fiat pro qua in omni sacrificio ponebatur sal discretionis. Per hec tria ergo erit integra confessio. Circumstancie peccatorum[8] hoc versiculo retinentur: quis, quid, ubi, per quos, quociens, cur, quomodo quando. Debet enim attendere sacerdos cuiusmodi sit persona confitens[8a] et quod factum confitetur et locum; an sit sacerdos an profanus; et coadiutores quot et qui sunt; et quotiens et causam, utrum ex feruore etatis an aliter; et modum, utrum secundum naturam uel contra naturam; et tempus, utrum scilicet in sacro tempore uel in alio.[9] Cum ergo sacerdos uidet omnia ista predicta in confitente, pro certo habeat eius penitentiam ueram et condignam et eum esse in caritate.

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[17] Cf. *Ezech.* iii, 19.

[18] *Sent.* IV, 16, 3; Quaracchi II, 842; *Decretum, De poen.*, D. 5, c. 6.

[18a] Cf. *Joan.* ix, 1-37.

[19] *Rom.* ix, 18.

[20] *Ps.* xxxv, 7.

[21] Cf. *Sent.* IV, 9, 1; Quaracchi II, 793; *Decretum, De cons.*, D. 2, c. 47; Augustine *Tract. in Ioan.* 25, 4, 12; PL 35, 1602.

[22] contempsit *add.* T.

[1] The fifteen grades of penance are not found in any known work of St. Augustine; they are referred to by Peter Cantor, *Verbum Abbreviatum* c. 115; PL 205, 305. For the *Liber de penitentia*, cf. Introduction.

[1a] Cf. *Enarr. in Ps. cl*, 1; PL 37, 1960.

[2] Cf. *Enarr. in Ps. cxix*, 2; PL 37, 1597-1599.

[3] Cf. Peter Cantor, *Verbum Abbrev.* c. 146; PL 205, 551; *Decretum, De poen.*, D. 2, c. 1.

[3a] Peter Cantor, *Verbum Abbrev.* c. 105; PL 205, 288.

[4] II *Cor.* vii, 10.

[4a] peccata *add.* T.

Notandum autem quod ista quindecim non tantum annotanda sunt confessioni oris sed etiam contritioni cordis et satisfactioni operis; quia deuote confitens ad hoc quod in corde uere et plene peniteat, debet habere ibi amaritudinem, uerecundiam et humilitatem, deuotam uoluntatem, fidem, ecclesie comprehensionem et memoriam omnium peccatorum quam habere potest in genere et in specie et [in][10] indiuiduo; et ueram et hylarem et morosam et propriam et accusatoriam, frequentem et integram compunctionem; (fol. 7va) et similiter in satisfactione operis uelut in elemosina, cum eam largitur pro satisfactione operis, que tunc debet habere ponderis.[11] Sit elemosina deuota et tamen eum ad amaritudinem prouocans quia peccata commisit. Sit uerecunda et humilis ne fiat pro iactantia uel uana gloria. Sit uoluntaria et fidelis ne coacta ne pro temporalibus. Sit generalis, specialis et indiuidualis de omnibus scilicet que homo possidet, soluens primitias et decimas et quidquid potest proximo[11a] impendere. Sit uera, non de rapina uel fenore uel symonia uel de aliquo illicite acquisito. Sit hylaris quia *hylarem datorem diligit deus.*[12] Sit morosa iuxta illud: Desudet elemosina in sinu tuo donec inuenias iustum cui des.[13] Sit propria manu uel interiori affectu erogata. Sit accusatoria iuxta illud postoli: *Cum omnia bona fecerimus, dicemus quam serui inutiles sumus.*[14] Sit frequens et integra id est sepe et omnibus quibus potest et quanto affectu potest impensa.

Obiectio. Contra predicta sic obicitur. In multis uidemus amaritudinem, uerecundiam et humilitatem, et cetera que sequuntur, et tamen illis nulla est gratia; sicut dicit Augustinus de milite naturaliter strenuo qui naturali strenuitate patitur eculeos, carceres et ungulas et martiria, tamen non ideo meretur palmam sed tolerabilius supplicium in gehenna.[15]

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[5] *Ps.* lv, 8-9.

[5a] Cf. Augustine, *Sermo* 82, 7; PL 38, 510.

[6] pretendendo T.

[6a] Cf. Gregory, *Moralia* xxv, 9, 22; PL 76, 334.

[7] Cf. *Decretum, De poen.*, D. 5, c. 1; *Sent.* IV, 16, 2; Quaracchi II, 841; Pseudo-Augustine, *De vera et falsa poenitentia* 15; PL 40, 1125-1126.

[8] What follows is based on: *De vera et falsa poenitentia* 15, 29; PL 40, 1124.

[8a] confitentis T.

[9] anno T.

[10] in *om.* B.

[11] que tunc . . . ponderis—tunc debet habere pre oculis ut T.

[11a] pro domino T.

[12] II *Cor.* ix, 7.

[13] Cf. Augustine, *Enarr. in Ps. cii*, 12; PL 37, 1236.

[14] Cf. *Luc.* xvii, 10.

[15] Cf. Augustine, *De patientia* 26, 23; PL 40, 623. *Sent.* IV, 15, 7; Quaracchi II, 835. *Decretum, De poen.*, D. 3, c. 49.

[*k. Quod omnis penitentia debet esse accusatoria sui ipsius.*]

Obiectio. Item dictum est quod omnis penitentia debet esse propria et accusatoria ipsius penitentis et non alterius, ergo secundum hoc in nulla penitentia debemus alios accusare sed nos tantum.

Obiectio. Sed contra hoc, sic: Esto quod tres sunt in naui uel insula ubi instat periculum mortis, scilicet tu et mater tua et sacerdos cuius focaria est mater tua et tu cognouisti eam. Tu es in articulo mortis; non habes cui confitearis nisi sacerdoti illi. Quid facies? Tu scis illum esse cerebrosum et statim irruet in te et interficiet[16] si confitearis crimen et non sufficit tibi dicere: Ego cognoui aliquam; sed oportet ut dicas: Ego cognoui matrem meam. (fol. 7^{vb}) Sed constans est quod sic accusat alium et non se tantum, ergo hic non est propria penitentia.

Obiectio. Similis casus sed difficilior de illo qui dedit fidem in facie ecclesie de ista ducenda et interim antequam contrahat cum illa per uerba de presenti, cognouit matrem illius sponse sue; ipse interim confitetur crimen illud sacerdoti; postmodum petit ut sacerdos celebret matrimonium cum sciat pro certo quod non tenebit illud matrimonium cum cognouerit matrem sponse sue; ergo iam effecta est illegitima ad contrahendum cum [eo].[17] Quid ergo dicet ei sacerdos hoc petenti? Quid si maior prelatus compellat eum ad hoc? Quid si peteret eucharistiam? Nonne daret in facie ecclesie quamuis sciret peccatum eius occultum? Eadem ratione in facie ecclesie concedet ei ut contrahat cum illa.

SOLUTIO. Ad primum credimus in hiis esse distinguendum, scilicet quod duo sunt genera circumstanciarum; quedam enim sunt leues et non sunt de substantia actus; alia uero adeo sunt de substantia peccati et adeo eius augent deformitatem quod illis tacitis non celebratur confessio peccati, sicut de eo qui cognouit matrem uel sororem. Unde exigitur quod tales circumstantie semper exprimantur, non intentione alios accusandi sed plene et integre peccata confitendi. Unde in primo casu dicimus quod tu in predicto[18] articulo qui matrem cognouisti teneris confiteri sacerdoti cuius est focaria licet pro certo habeas quod propter hoc mortem incurres. Sicut Iohannes Baptista non distulit arguere Herodem licet uideret mortem sibi imminere.[19] Sicut de facto accidit in ciuitate ista; quod cum quidam traheretur ad furcas pro homicidio quod patrarat, oblatum est ei iudicium aque frigide uel ferri candentis ut sic liberaret se et totam eius parentelam, scilicet ducentos cum eo incarceratos, qui accessit ad sacerdotem et confessus est ei crimen. Sacerdos de consilio prudentium uirorum iniunxit ei ne aliquo temptaret dominum subeundo iudicium sed taceret et deuotus sustineret quicquid ei machinarentur apparitores; et ita quia eum inuenerunt (fol. 8^{ra}) taciturnum, irruerunt in eum et deuote sustinuit martyrium, quia nullo modo potest quis dispensare contra nouum testamentum uel uetus[19a] quia districte preceptum est: *Non temptabis dominum etc.*[20]

Ad sequens dicimus[21] quod sacerdos non debet celebrare illud matrimonium sed transmittere ad superiorem et precelare factum quibuscumque poterit causis rationabilibus.[22] Et est simile de iudice qui scit istum esse innocentem etiam[23] sufficienter est alligatum contra et secundum allegata sententiendum est contra ipsum. In tali articulo iudex, cum non debeat agere contra conscientiam ne edificet eam ad gehennam,[23a] debet, sicut dixit Cantor,[24] transmittere causam ad superiorem et tandem ad dominum papam.

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[16] te *add.* T.

[17] ea B.

[18] primo T.

[19] Cf. *Matt.* xiv, 4; *Marc.* vi, 18.

[19a] For the views of the twelfth century decretists on this point, cf. J. Brys, *De dispensatione in Iure Canonico praesertim apud Decretistas et Decretalistas* (Universitas Catholica Lovaniensis—Dissertationes II, 14, Bruges, 1925), pp. 126 ff; e.g. *Summa Paris.*: contra legem veteris et novi testamenti . . . non admittitur dispensatio. Brys p. 127.

[20] *Deut.* vi, 16; *Matt.* iv, 7.

[21] dicunt quidam T.

[22] sine reuelatione confessionis *add.* T.

[23] et tamen T.

[l. *Cum per se sufficiat contricio in isto, ad quid superadditur confessio.*]

Questio. Item cum per se sufficiat contricio ad deletionem macule et pene in casu, ad quid superadditur confessio que nichil omnino tollit in isto cum omnia deleta sint prius per ueram contricionem; quod patet per illud euangelicum: *Lazare exi foras;*[25] prius enim suscitatur quam a discipulis soluatur; sed eius suscitatio non est nisi iustificatio;[25a] solutio[26] autem non est nisi illa absolutio que fit a sacerdote in confessione oris et ita prius iustificatur quis per contritionem quam fiat absolutio per ueram oris confessionem. Hoc idem arguitur per hoc quod dominus prius mundauit decem leprosos quam dixit: *Ite ostendite uos sacerdotibus;*[27] in quibus plene precessit lepre mundatio oris confessionem, et cum oris confessio nichil addat precedenti mundationi uidetur quod omnino superflua sit oris confessio.[28]

[*m. Utrum differri possit confessio oris ubi habetur copia sacerdotis.*]

Questio. Item nonne differri potest confessio ubi etiam habetur copia sacerdotis. Vide enim quod minus sufficiens et indiscretus est sacerdos quem habes ad manum, nonne expedit ut discretior expectetur per mensem uel per duos uel aliquamdiu? Preterea qui presens est sacerdos aut omnino fatuus est aut confessionum reuelator. Si qua adest iuuencula inuitat etiam eam ad luxum potius quam ad confessionem. Nonne in tali casu querendus est melior? Hoc enim fieret (fol. 8^{rb}) in cura corporali scilicet ut omisso indiscreto medico quereretur discretior; multo magis hoc obseruandum in cura anime spirituali.

Obiectio. Sec contra sic: Esto quod episcopus huius sacerdotis cuilibet parrochiano ipsius precipiat ne propter confessionem ad alios transferat, et si transferat, excommunicat eum per ruralem decanum. Quid ergo huiusmodi facient parrochiani? Preterea ille alius sacerdos non debet mittere manum in alienam messem;[29] ergo non spectat ad eum eorum cura cum non sit pastor illorum; ergo non spectat ad eum iniungere penitentiam. Preterea si dicis quod debent se ad alium transferre [ideo quod discretior],[30] eadem ratione ad discretiorem baptistam; quod falsum est ut patet per apostolum dicentem in epistola ad Corinthios: *nec qui rigat aliquid est, nec qui plantat aliquid est, sed qui incrementum dat deus.*[31] Ut dicit auctoritas quod uirtus sacramentorum non pendet ex meritis ministrorum.[32] Sicut ergo melior sacerdos non melius consecrat eucharistiam nec melius baptizat quam minus discretus, ita uidetur quod tantum ualet penitentia ab indiscreto iniuncta sacerdote quantum illa que imponitur a discreto.

SOLUTIO. Dicimus quod contricio in casu sufficit ad deletionem pene et culpe [sine][33] omni confessione oris precipue ubi non habetur copia sacerdotis nec alicuius cui confiteatur. Sed ubi habetur copia sacerdotis coexigitur confessio oris in qua est magna pars penitentie scilicet erubescentia; et ideo bonum est pluribus confiteri sacerdotibus quia tanto maior confitendi incurritur uerecundia;[33a] et ualet confessio oris cum contricione cordis propter hoc quod sacerdos iniungit penitentiam, recipit penitentem in suffragia ecclesie et se ei constituit patrem spiritualem ut pro eo tanquam pro filio proprio amodo propentius oret, et ut magis per erubescentiam confundatur confitens; et ideo qui contemnit confiteri ore cum possit delinquit. Preterea sicut in cura corporis debet expectari aliquamdiu discretior medicus, antequam ab indiscreto (fol. 8^{va}) medico sumatur potio, ita discretus sacerdos debet expectari etiam longo tempore antequam secundum stultum agatur consilium sacerdotis fatui; et si iuuencula sciat sacerdotem reuelatorem confessionum uel irritare eam ad luxum et instet etiam dies pasche et sciat se non posse habere alium discretiorem sacerdotem cui confiteatur, consilium sanum est ut adducat patrem aut matrem uel aliquem carum suum ante sacerdotem et coram illis simul confiteatur ne ante testem illum audeat eam sacerdos ad luxum proucare quod faceret si in secreto. Et si excommunicatur quia ad discretiorem transit in remedium penitentie, patienter sustineat illam iniustam excommunicationem. Et secus est de baptismate et de confectione quam de confessione et penitentia quia in celebratione tam baptismatis quam eucharistie non requiritur maior aut minor scientia sed tantum forma uerborum et ordo et substantia elementi. Sed in penitentia iniungenda coexigitur sanius et discretius consilium secundum auctoritates patrum et intelligentiam scripturarum.

[23a] Peter Cantor, *De sacramentis* I, 45; *Troyes* 276, fol. 46^{ra}. For the use of this expression in the commentators and decretists, cf. S. Kuttner, *Kanonistische Schuldlehre*, p. 266 n. 2; p. 267 n. 1 etc.

[24] Peter Cantor; the opinion given here may be in the unedited *De sacramentis* or Courson may be giving merely an oral tradition from his master.

[25] *Joan.* xi, 43.

[25a] Cf. *Sent.* IV, 17, 1; Quaracchi II, 846.

[26] illa que fit a discipulis *add.* T.

[27] *Luc.* xvii, 14.

[28] Cf. *Sent.* IV, 17, 1; Quaracchi II, 846; *Decretum, De poen.*, D. 1, c. 34.

[29] Cf. *Deut.* xviii, 25.

[30] ideoque deterior B.

[31] Cf. I *Cor.* iii, 7.

[32] Cf. Alanus of Lille, *Contra Haereticos* II. 14; PL 210, 390.

[33] sicut B.

[*n. Utrum confessio et contricio et satisfactio sint in precepto.*]

Questio. Item cum penitentia sit in precepto sicut ait Iohannes: *Agite penitentiam quia appropinquabit regnum celorum,*[34] queritur utrum confessio et contricio et satisfactio operis sint in precepto; quia in Iohele precipitur contricio ubi dicitur: *Scindite corda uestra et non uestimenta uestra;*[35] et in Osee propheta precipitur confessio oris ibi: *Effunde sicut aquam cor tuum;*[36] iterum: *Effundite coram eo corda uestra;*[37] unde Iacobus: *Confitemini alterutrum peccata uestra.*[38] Satisfactio autem precipitur in Iohanne ibi: *Facite dignos fructus penitentie.*[39]

Obiectio. Sed contra ita est quod sine confessione est salus in casu ut ostensum est; quomodo est confessio in precepto? Preterea confessio est sacramentum in nouo testamento, ergo secundum Augustinum id efficit quod figurat.[40] Sed figurat mundationem, ergo efficit mundationem; non ergo sola contricio efficit eam.

Obiectio. Item confessio est sacramentum, ergo rei signum,[41] ergo significat aliquam rem sacram non nisi emundationem, (fol. 8^{vb}) ergo confessio est signum emundationis.

SOLUTIO. Omnia predicta sunt in precepto ei qui potest illa exercere quantum in eo est, et sicut in nouo precipitur confessio ut a Iacobo et ibi: *Ite ostendite uos sacerdotibus*[42] ita in uetere testamento sub umbra precipiebatur, ueluti de leprosis proiectis extra castra et postmodum intra receptis.[43] Et confessio est sacramentum et rei sacre signum; ubi tria sunt notanda; primum scilicet confessio est signum tantum; secundum scilicet contricio est signum et res signi quia est signum mundationis et est res signi scilicet confessionis; tercium scilicet mundatio est res signi tantum scilicet contricionis.[44] Signum enim quandoque precedit signatum ut nubes pluuium, quandoque sequitur ut uestigium pedis precedentem gressum.

[33a] Cf. *Sent.* IV, 17, 3; Quaracchi II, 851-852. *De vera et falsa poen.* 10, 25; PL 40; 1122.

[34] Cf. *Matt.* iii, 1-2; iv, 17.

[35] *Joel.* ii, 13.

[36] *Thren.* ii, 19.

[37] *Ps.* lxi, 9.

[38] *Jac.* v, 16.

[39] *Luc.* iii, 8; cf. *Matt.* iii, 8.

[40] Cf. *Sent.* IV, 4, 1; Quaracchi II, 762.

[41] *Sent.* IV, 1, 2; Quaracchi II, 745.

[42] *Luc.* xvii, 14.

[43] Cf. *Lev.* xiii, 44—xiv, 32.

[44] Cf. *Sent.* IV, 22, 2; Quaracchi II, 888.

[II DE REMEDIIS PECCATORUM.]

[Caput V.] Sequitur de remediis peccatorum in quibus consistit satisfactio operis que bipartita est quia consistit in largitione elemosine et carnis maceratione.

[*a. De triplici elemosina.*]

Est autem triplex elemosina. Prima consistit in contritione cordis qua aliquis seipsum offert deo iuxta illud: *Miserere anime tue placens deo.*[1] Unde hec elemosina dicitur ab eleys quod est miserere et de hac dicitur in euangelio: *Sicut aqua extinguit ignem ita elemosina peccatum.*[2] Secunda consistit in compassione proximi qua compatimur alienis aduersitatibus tanquam nostris; unde Iob: *Mecum coaluit miseratio et ab utero matris mee egressa est mecum.*[3] Tercia consistit in largitione manuali uel in aduocatione uel in cura corporali aut spirituali et in quocumque subsidio et consilio quod impendimus proximo; unde Ambrosius: Pasce fame morientem; nisi paueris occidisti.[4] Et iterum ueritas ait: *Date elemosinam et omnia munda sunt uobis.*[5] Sed prima elemosina maior est aliis; nam in illa homo se offert tanquam holocaustum id est totum incensum deo, sed in aliis duabus offert se quasi sacrificium scilicet quasi hostiam particularem. De hac triplici elemosina dicemus inferius.

[*b. De carnis maceratione.*]

Satisfactio autem que consistit in carnis maceratione (fol. 9ra) quadruplex est quia consistit in orationibus, uigiliis, ieiuniis et flagellis. De oratione dicit ueritas: *Orate sine intermissione,*[6] id est non intermissis canonicis horis; unde illud: *Septies in die laudem dixi tibi.*[7] Sed ut dicit Augustinus: Non cessat orare qui non cessat bene agere quia oratio est pius affectus ad deum,[8] plerumque ne pigritetur in voce prorumpens. De uigiliis dicitur in euangelio: *Et erant in regione illa pastores custodientes uigilias noctis super gregem suam;*[9] unde illud: *Si paterfamilias uenerit in secunda uigilia uel tercia uigilia et ita inuenerit beati sunt serui illi;*[10] unde alibi ait dominus: *Vigilate et orate ne intretis in temptationem.*[11] De flagellis dicimus quod quadripartita sunt; prima consistunt in armis penitentialibus scilicet in cinere et cilicio et lacrimarum aculeis; secunda in ieiuniis; tercia in afflictione peregrinationis; quarta in tribulatione et cuiuslibet egritudinis afflictione; cuiusmodi flagella sustinuit Iob; de quibus Salomon ait: *Flagellat dominus omnem filium quem recipit.*[12] Sciendum quod hec omnia satisfactionis opera iniungenda sunt penitenti a sacerdote loco penitentie; unde si egritudo, si paupertas, si persecutio tyrannorum uel alia tribulatio penitenti ingrauat, sacerdos debet omnem talem afflictionem iniungere pro parte penitentie et ualebunt omnia ista si assit deuota pacientia.

[*c. Obiectiones in contrarium.*]

Obiectio. Sed esto quod summa assit contricio que sufficiat ad deletionem pene et culpe. In hoc casu omnia opera ista superflua uidentur quia dicit auctoritas quod penitentie arbitrarie sunt, id est secundum arbitrium sacerdotis iniungende.[13] Cum ergo sacerdos scit[14] quod pena et culpa tolluntur per contricionem, ipse non debet iniungere penitentiam. Sicut nec Iuo[15] carnotensis episcopus fecit quando confugit ad eum quedam cum summa contricione que cognita fuerat a patre proprio; qui cum iniunxit[16] septennem penitentiam, ipsa se effundens in riuum lacrimarum petiit potius centennem penitentiam quod ipse attendens[17] iniunxit ei tricennem, deinde biennem (fol. 9^{rb}) deinde mensurnam, tandem eam penitus absoluit cum eam semper magis et magis uideret in lacrimis effluere.[18] Cum uero pater eius agrestis, durus et sine lacrimarum humore ad eum accessit, erubuit primo peccatum confiteri et noluit peccatum confiteri[19] ore proprio sed ait: Filia mea satis tibi notificauit peccatum meum et sufficit. Unde commotus episcopus duplicauit penitentiam, deinde cum uidisset eum magis obstinatum multiplicauit; at ille semper omne honus penitentie respuit. Episcopus autem tandem ei iniunxit ut tota uita sua ieiunaret in pane et aqua et nudus incederet et ecclesiam non intraret; at illo omnia respuente ait ei episcopus; Trado te corporaliter uexandum in manus sathane et ab ecclesia tanquam membrum putridum precido.

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[1] *Eccli.* xxx, 24; Cf. *Sent.* II, 15, 5; Quaracchi II, 833.

[2] Cf. *Eccli.* iii, 33; Gregory, *Hom. in Evang.* I, 29; PL 76, 1165.

[3] Cf. *Job* xxxi, 18.

[4] Pseudo-Ambrosius; *Decretum,* D. 86, c. 21 *Pasce.*

[5] Cf. *Luc.* xi, 41.

[6] I *Thess.* v, 16.

[7] *Ps.* cxviii, 164.

[8] Cf. *Enarr. in Ps. xxxvii,* 14; PL 36, 404. *Ep.* 130. 9; PL 33, 501-502. Peter Cantor. *Verbum Abbrev.* c. 124; PL 205, 318.

[9] Cf. *Luc.* ii, 8.

[10] Cf. *Luc.* xii, 38.

[11] *Matt.* xxvi, 41; *Marc.* xiv, 28.

[12] Non Salomon sed S. Paul., *Hebr.* xii, 6.

Dicimus ergo quod tanta potest esse contricio quod sufficiet ad omnem deletionem pene et culpe et non oportet ut alia penitentia iniungatur; et tamen dicuntur arbitrarie penitentie non quia sacerdos omnem quam uult debeat iniungere penitentiam [sed][20] potius secundum maiorem uel minorem penitentis contricionem.

Obiectio. Sed adhuc obicitur: Ecce aliquis qui omnia predicta deuota impleuit uberrime flendo et deuote confitendo, sed ad plenam restitutionem[21] illorum que illicite acquisiuit nullo modo potest induci, sicut nec fenerator, nec symoniacus, nec claustrum quod ex symoniis et rapinis uiuit, cum auctoritas clamet: Non dimittur peccatum nisi restituatur ablatum;[22] in qua supplendum est: si potest restitui. Sed isti possunt restituere et contra dicunt; ergo illis non dimittur peccatum, quod concedimus; iuxta illud euangelicum: *Tradite illum tortoribus quousque reddiderit usque ad ultimum quadrantem.*[23] Est ergo restitutio pura et precipua pars satisfactionis.

[*d. De restitutione ieiunii que non fit in propria sed in aliena persona.*]

Est autem et alia[24] restitutio quam secundum ueterem ecclesie consuetudinem tangit Augustinus[25] que non fit in propria sed in aliena persona, ut si quis recepta triennii penitentia et non completa in articulo mortis potest eam iniungere peragendam pro eo tribus caris suis, scilicet cuilibet annum.

Obiectio. Esto quod hoc fecerit (fol. 9va) et ita decesserit, iste plene absolutus est a culpa peccati et a pena per istos tres qui penam[26] pro ipso peragendam susceperunt; ergo iste statim uolat.

Obiectio. Sed contra: Aut deus punit aut homo. Sed constat quod adhuc non punitur iste in aliquo nec aliquis pro eo quia adhuc restant tres anni peragendi de penitentia ab illis caris; ergo ipse defert secum aliquid cremabile;[27] necesse est ergo ut transeat per ignem.

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[13] Cf. *Sent.* IV, 20, 3; Quaracchi II, 877; *Decretum, De poen.*, D. 1, c. 86.

[14] videat T.

[15] nec Ivo—ille T. We have no other record of this story about Ivo of Chartres.

[16] iniunxisset T.

[17] intuens T.

[18] in lacrimis effluere—flere T.

[19] et noluit . . . confiteri *om.* T.

[20] uel B.

[21] satisfactionem T.

[22] *Decretum* C. 14, q. 6, c. 1; cf. Augustine, *Ep.* 153 *ad Macedon.* 6, 20; PL 33, 662.

[23] Cf. *Matt.* v, 26; xviii, 34.

[24] penitenti *add.* T.

[25] Cf. *Enchiridion* 19-20; PL 40, 283.

[26] penam *om.* T.

[27] Cf. *Sent.* IV, 21, 5; Quaracchi II, 882.

[*e. De sic decedente in quo statu erit hoc anno.*]

Questio. Item queritur de isto sic decedente in quo statu erit in hoc anno; non erit in celo quia in eo est aliquid cremabile nec in inferno quia decessit in caritate, ergo erit in purgatorio; ergo superfluum est ieiunium carorum eius cum sine omni eorum ieiunio per tantum tempus futurum esset in purgatorio.

Obiectio. Preterea uidetur posse demonstrari quod nisi per medietatem unius anni permansurus fuit in purgatorio. Nam tres anni penitentiales hic, ibi conuertuntur in annum unum et illi in integrum suscipiunt totam eius penitentiam peragendam in hoc anno. Si ergo ieiunent per medietatem anni medietatem complebunt penitentie et iste in purgatorio per medietatem anni aliam medietatem supplebit;[28] ergo completa medietate anni tota[29] erit completa penitentia ipsius; ergo non oportet eos ieiunare nisi per medietatem anni cum promiserunt contrarium. Preterea esto quod statim postquam susceperunt eius penitentiam peragendam decedant; uel esto quod different penitentiam illam usque in annum, quid erit de isto interim?

SOLUTIO. Consuetudo ista sicut ait Augustinus[30] non est improbanda. Sed cari morientis nunquam debent absolute recipere penitentiam peragendam sed sub conditione sic: Tantum pro uobis ieiunabimus si possumus uel uixerimus. Et quia ieiunium magis prodest si de maiori caritatis deuotione et minus de minori, ideo non potest diffiniri quanto tempore absoluetur iste moriens a purgatorio pro eorum ieiunio quia si feruentissime[31] pro eo se affligant citius absoluitur; si tepide non adeo cito. Sed hoc semper habeat pro certo quod ieiunia carorum ualebunt ei in purgatorio ad (fol. 9^{vb}) celeriorem eius absolutionem sed nescitur ad quam celerem absolutionem;[32] et bene potest contingere quod completa medietate anni absoluetur iste a purgatorio et etiam quod citius si illi cari deuotissime ieiunent pro eo. Si uero statim moriantur uel differant penitentiam, affectio illorum qua moti sunt ad eius absolutionem aliquantulum poterit ei ualere.

[Caput VI. *f. De eo qui satis est contritus et intrat claustrum.*]

Obiectio. Item ecce aliquis qui sufficienter est contritus et sufficienter compleuit omnia opera penitentie ad arbitrium ecclesie nunc intrat claustrum; iste immunis est ab omni pena et culpa omnium suorum delictorum, ergo non tenetur ea que plene dimissa sunt iterum confiteri. Si tamen dicatur quod tenetur quia intrat claustrum et ad nouum accedit medicum animarum, eadem ratione omnis qui transfert se ad nouum sacerdotem tenetur omnia prius dimissa confiteri; ergo si nouus sacerdos conducticius et questuarius superueniet huic parrochie hoc anno, tota parrochia prius dimissa tenetur confiteri. Eadem ratione si alius in alio anno et tercius in tercio conducatur, omnia prius confessa iteranda sunt. Quod aliter probatur. Nouus medicus superueniens nescit radices criminum neque qualitates confitentium nisi preaudierit precedentia ut secundum ea imponat debitum modum curandi; ergo ad hoc quod discrete et conuenienter in mente sanet, oportet quod certificetur de omni crimine et criminis occasione precedente. Quod etiam arguitur per medicum corporalem qui si superducatur[1] egrotanti ad hoc quod uere curet, oportet quod sciat cuiusmodi potiones receperit a precedentibus medicis et cuiusmodi radices egritudinis precesserint. Quid ergo est quod ecclesia patitur huiusmodi crebras commutationes sacerdotum in parrochiis cum ipsis mercenariis qui non querunt nisi lanam de ouibus quia mercenarii sunt?

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[28] complebit T.

[29] completa medietate anni tota *om.* T.

[30] Cf. note 25 *supra.*

[31] et deuotissime *add.* T.

[32] absolutionem *om.* T.

[1] superinducatur T.

[*g. De aliis casibus difficillimis.*]

Sunt etiam et alii casus difficillimi in quibus dubitare potest sacerdos plurimum cuiusmodi satisfactionem debeat iniungere penitenti. Verbi gratia: ecce aliquis curialis clericus uel prelatus uel sciolus quicumque qui interfuit multis obscenis contractibus aut symonie aut usure aut exactioni cuicumque et non restitit quantum in se (fol. 10^{ra}) erat cum potuisset et ideo dubitat an fuerit reus alicuius talis mortalis; cogitat enim intra se quod error cui non restitit hic probat,[2] et ideo sic effectus dubius accedit ad sacerdotem dicens se dubitare an sit in mortali et tamen credit quod debeat confiteri de mortali.

Obiectio. Obicitur ergo sic; aut iste penitet de aliquo peccato aut non. Si non penitet de aliquo peccato et credit se debere penitere de aliquo peccato, ergo contemnit, ergo peccat mortaliter.[2a] Preterea ipse sibi timet iuxta illud: *Beatus qui semper est pauidus*;[2b] in illo timore aut penitet aut non. Si penitet, ergo de aliquo uel de aliquibus; sed nullum peccatum certum proponit; quam ergo penitentiam potest ei iniungere sacerdos? Si non penitet quomodo ergo caritas permittit eum non penitere cum credat se penitere debere?

Questio. Item infiniti in hoc anno afflicti et in carcere mortui sunt ex defectu corporalis aut spiritualis alimonie et hoc interfuit nobis et poteramus illis subuenisse aut in corporali aut in spirituali alimonia et non subuenimus eis et nescimus utrum eos sic[3] omittendo interfecerimus. Quia *quis delicta intelligit?*[3a] *In multis offendimus omnes.*[3b] Quid ergo dicent nobis sacerdotes de hiis confitentibus? Aut iniungent nobis penitentiam prout[4] homicidiis aut omnino absoluent nos, an relinquent nos proprie conscientie que dictitat nobis quod in hiis plurimum deliquimus? Hic sacerdoti angustie sunt undique quia si talibus penitentias imponat nescit quis aut quid debeat iniungere. Si eos absoluit magis confirmat eos in suas omissiones; huiusmodi immo grauiores angustie pungunt capellanum principis expoliatoris, raptoris et feneratoris emungentis.

Questio. Quid dicet iste capellanus principi nescienti quanta rapuerit uel a quibus uel omnino nolenti restituere cum totum regnum non sufficeret ad restitutionem eorum que per multas guerras destruxit et que uiolenter rapuit; an dicet illi: nullatenus potes saluari nisi omnia uendas ad restitutionem faciendam et nudus exeas et si aliquid tibi excreuerit semper residuum restituas. Sed si hoc fecerit princeps (fol. 10^{rb}) ad consilium sacerdotis, quid erit de regno quod relinquitur inter hostes et ita permanebit sine defensione cum non possit defendi nisi per bona que in regno sunt qualitercumque acquisita?

SOLUTIO. Ad primum obiectum dicimus quod ille qui intrat claustrum et plene confessus est et satisfecit de omnibus prius commissis, abbati suo interim tenetur omnia confiteri quia iam non est qui fuerat sed quasi nouus homo et in nouo foro sub nouo militat principe et ideo ei noua res noua lex, noua sunt omnia. Unde ad plenum remedium penitentie omnia ei sunt innouanda ut abbas ille nouus secundum diversas criminum occasiones et radices sciat ei remedium penitentie prestare in posterum et omnes causas precidere peccatorum ne iterum recidiuum patiatur. Similiter si nouus sacerdos superueniat in parrochia, parrochyani de nouo tenentur omnia prius confessa iterare, ad hoc quod debitum penitentie remedium cuiusque peccatis iniungat.[5] Mercenarii uero sacerdotes et conducticii qui annuatim discurrunt ad diuersas parrochiarum curas non sunt in statu saluandorum quia mercenarii sunt et non curant de ouibus nisi lanam. Nam ut dicit Augustinus tres sunt persone in ecclesia scilicet pastores et isti sunt laudandi et eligendi; mercenarii et hii sunt ad tempus tolerandi; fures et hii sunt omnino expellendi.[6] Sed mercenarii non sunt ita tolerandi tanquam fructum afferant sed potius ut amoueantur et loco illorum pastores substituantur. De illis autem qui propter omissiones predictas nesciunt utrum sint in mortali uel non, dicimus quod cum dicunt sacerdoti: forte nos rei sumus tot mortalium peccatorum quia multi sunt mortui in hac civitate et in carcere et nos, cum potuimus, non subuenimus eis aut uerbo aut exemplo aut temporali subsidio aut orationum suffragio et forte sic in incuria nostra mortui sunt; de hiis inquam, dicimus quod cum sic confitentur sacerdoti, cum dubia sit eorum confessio, non potest esse certa sacerdotis responsio. Dicimus (fol. 10^{va}) quod in hiis dubiis in tuciorem partem indeclinandum est,[6a] quia secundum Gregorium: Bonarum mentium est ibi culpam cognoscere ubi culpa non est.[7] Dicat ergo sacerdos sic dubie confitenti ut culpam agnoscat et dicat se reum mortalis peccati cuius forte reus non est. Sicut apostolus ait se esse *indignum vocari apostolum*[8] et cotidie dicitur in ecclesia: Ego reus et indignus sacerdos confiteor etc;[9] dicat ergo se penitere de hoc homicidio uel de illis homicidiis que nunquam forte commisit; nec sic mentitur licet non commiserit quia non it contra mentem quia hoc non dicit intentione fallendi;[9a] et debet ei iniungere penitentiam tanquam de mortali secundum qualitatem contricionis; et quecumque opera meritoria de cetero faciat, ei sint ad illius et omnium peccatorum suorum remedium. Si autem hic aliquid deficiat de penitentia[10] peragenda in purgatorio suppleatur.

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[2] restitit hic probat—resistitur probatur T. Cf. *Decretum*, D. 83, c. 3.

[2a] On *contempt* in the decretists, cf. Kuttner, *Kanonistische Schuldlehre*, pp. 29-30.

[2b] *Prov.* xxviii, 14.

[3] illud T.

[3a] *Ps.* xviii, 13.

[3b] *Jac.* iii, 2.

[4] de tot T.

[5] penitentis *add.* T; peccatis *add.* B.

[Caput VII. *h. De confitente peccatum quod non fecit.*]

Obiectio. Sed adhuc obicitur; ipse sic confitens conteritur sed omnis contricio delet peccatum[1] ergo illa contricio delet in eo aliquod peccatum. Sed ipse nullum peccatum commisit; sit ita, quid ergo faciet in eo contricio cum nichil deleat?

SOLUTIO. Duplex est effectus contricionis, unus est deletio peccati, alter augmentum[2] corone. Sicut ergo de Iob legimus qui propter flagella ei immerito inflicta augmentum corone recepit,[3] ita contricio licet nichil in isto deleat tamen ualet ei ad augmentum glorie. Talis autem argumentatio non ualet: iste credit se debere penitere[4] de mortali et non penitet de mortali[5] ergo contemnit; et est fallacia figure dictionis quia proceditur a simplici suppositione huius termini *peccato* ad eiusdem personalem. Si queris utrum talis peniteat dicimus quod reuera penitet si dubitet se commisisse mortalem dummodo sit in caritate.

De capellano principis dicimus quod triplicem veritatem debet attendere scilicet ueritatem uite, doctrine, iustiticie;[5a] et ut dicit Ieronimus attendere debet quod melius est quod scandalum oriatur quam ueritas ista triplex relinquatur,[6] et hoc quod dicit Augustinus non dimittitur peccatum nisi restituatur ablatum.[7] Debet ergo dicere principi in predicto articulo ut si (fol. 10^{vb}) condignos penitentie fructus uult accipere ut restituat que potest, iuxta illud euangelicum: *Tradite illum tortoribus et cetera,*[8] nec propter scandalum id est offensionem eius debet omittere quin dicat, sicut exigit ueritas doctrine et iusticie, ut ille confitens recipiat ueritatem uite. Quecumque ergo rapuit quecumque confiscauit, in solidum restituat si uere uult uiuere; exeat ergo potius a regno ita quod etiam omnes alios permittat periclitare potius quam in gehennam descendat iuxta illud euangelicum: *Quid prodest homini si totum mundum lucretur et anime detrimentum patiatur.*[9] Si autem noluerit ei in aliquo credere nec aliqua ad arbitrium eius agere et tamen uoluerit sacramentis ecclesie communicare utpote eucharistie, deneget ei in secreto iuxta illud: Tantum peccasti tradens corpus Christi peccatoribus membris quantum qui eum crucifixerunt ambulantem in terris.[10] Si autem in publico petat eucharistiam in facie ecclesie, non deneget ei sicut nec dominus Iude proditori, quia tunc non esset correptor proximi sed proditor nisi in illo casu ubi eius crimen esset notorium.

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[6] Cf. Augustine, *Sermo* 137, 5; PL 38, 757.

[6a] Cf. Peter Cantor, *De sacramentis* I, 80; *Troyes* 276, fol. 67^{vb}: Tutius est ad aliquam partem declinare in qua certum est nullum esse peccatum.

[7] *Ep. ad Augustinum* 8; MGH *Ep.* II, p. 339.

[8] I *Cor.* xv, 9.

[9] One of the forms of the *Confiteor* in mediaeval derived rites; cf. V. Leroquais, *Les sacramentaires et les missels manuscrits* II (Paris, 1924), p. 186.

[9a] Cf. Augustine, *Contra mendacium* 12, 26; PL 40, 537. Peter of Poitiers, *Sent.* IV, 5; PL 211, 1155.

[10] de penitentia *om.* T.

[1] peccatum *om.* T.

[2] glorie uel *add.* T.

[3] Cf. *Job* xlii, 10.

[4] confiteri T.

[5] non penitet de mortali—non confitetur T.

[5a] Peter Cantor, *De sacramentis* I, 75; *Troyes* 276, fol. 63^{va}.

[6] Not Jerome but Gregory, *In Ez.* I, *Hom.* 7, 6; PL 76, 842: utilius permittitur nasci scandalum quam veritas relinquatur.

[7] Cf. note 22, Cap. V.

[*i. De animalibus immundis in lege.*]

Item in Leuitico dicitur quod ista animalia immunda sunt in lege:[11] mus, mustela, stellio, lacerta, talpa, cocodrillus.[12] Per murem et mustelam designantur minores raptores et fures; uterque enim pro uentris ingluuie nulla uitat pericula.[13] Stellio animal quoddam paruum ut ibi dicitur sed ualde uenenosum.[14] Lacerta est animal habitans in sepulchris.[15] Talpa animal cecum de terra genitum creatur, ut aiunt, de terra compluta et lutulenta sed prius corrupta;[16] per quod designantur cupidi qui tantum terrenis inhiant. Cocodrillus autem animal est dure cutis et maliciosum quod lute pascit,[17] et ut dicit Plinius,[18] animal istud excrescente magnitudine dentium, superiori maxilla mota et inferior immota; animal est infestum in mari in terra et in flumine; et ideo ut dicit auctoritas publicos designat grassatores et exactores; et dicit ibi auctoritas quod quicumque tetigerit aliquod istorum immundus erit usque ad uesperum;[19] quod sic exponitur: usque cum plenam et condignam peregerit penitentiam.

Obiectio. Ergo si capellanus tetigerit suum cocodrillum, id est principem raptorem et immundum, communicando ei immundus erit quousque super hoc dignam egerit penitentiam: ergo cum uideat eum incorrigibilem post primam et secundam et terciam admonitionem, non debet nec potest cum eo commorari communicando bonis que illicite acquisite sunt nisi agat causam spoliatorum.

Questio. Item dicendum est omnibus seruientibus tali cocodrillo. Si enim clericus aliquis uel alius quicumque diu militauit sub tali principe non resistendo eius exactionibus aut consentiendo aut cooperando, tibi accesserit in foro penitentiali, quid dices ei?

Obiectio. Nonne iniunges ei ut omnia pro posse suo restituat, cocodrillo nolente restituere uel iam defuncto? Quod probo per simile; quia si mille fuerint incendarii tecum et omnes mortui sunt, te solo superstite, et nulla adhuc facta sit restitutio, nonne teneris, ut dicit canon,[19a] omnia restituere in solidum? Ergo a simili debes isti iniungere ut omnia restituat quorum rapine consensit scilicet quocumque modo consentiendi, iuxta illud: Error cui non resistitur, approbatur;[20] et apostolus dicit: *Non solum agentes sed etiam consentientes digni sunt morte;*[21]

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[8] Cf. *Matt.* xvii, 34.

[9] *Matt.* xvi, 26.

[10] Peter Cantor, *Verbum Abbrev.* c. 30; PL 205, 107.

[11] non quo ad naturam uel creationem sed quo ad significationem *add.* T.

[12] *Lev.* xi, 30.

[13] *Glossa Ordinaria in Lev. xi*; PL 113, 330.

[14] Rhaban Maur, *Expositio in Lev.* III, 1; PL 108, 362.

[15] *Ibidem.*

[16] *Glossa Ord. ibid.*

[17] *Ibidem.*

[18] *Nat. Hist.* 28, 8.

[19] *Lev.* xi, 24.

[19a] *Decretum,* C. 23, q. 8, c. 32.

[20] *Decretum,* D. 83, c. 3.

[21] Cf. *Rom.* i, 32.

et Ambrosius super illum locum: consentire est, cum possis, non arguere uel errorem adulando fouere.[22] Unde dicit Augustinus quod omnes Iudei minores rei fuerunt mortis Christi quia non restiterunt pro posse eius crucifixoribus.[23] Et iterum Augustinus super illum locum euangelii: *Misso spiculatore iussit amputari caput Iohannis in carcere*,[24] ibi, inquam, dicit quod crimen unius, Herodis scilicet, transiuit in omnes commensales quia Herodi non restiterunt sed tacuerunt in decollatione.[25]

SOLUTIO. Dicimus ergo quod sacerdos deberet talibus in remedium penitentie iniungere ut restituant pro suis cocodrillis quibus adheserunt uel quibus non restiterunt omnia quecumque possunt, ex quo ab illis nulla facta est restitutio. Similiter dicimus de incendiariis et de mouentibus seditionem in ciuitate; et quia tam enorme est flagitium incendiariorum et difficile est (fol. 11^{rb}) condignam ei iniungere penitentiam ideo tradit decretalis[26] ut tales mittantur ad dominum papam. Sed quid si loco domini pape sederes: non uideo quod possis de iure aliud ei imponere quam prediximus.

[*k. De eo qui ignoranter interfecit patrem.*]

Obiectio. Item. Ecce aliquis accedit ad te qui nunquam habuit intentionem occidendi patrem, immo eum omnibus modis defendere contra feram ei insurgentem et omni adhibita diligentia quam potuit ne eum interficeret, tamen eum interfecit credens se interfecisse leonem illum[27] eo quod indiscrete se interposuit pater. Iste non est reus alicuius homicidii cum deus non pensat factum sed affectum;[28] ergo pro reatu homicidii non est iniungenda penitentia. Si ergo ei iniungis penitentiam, indigne punis eum. Sed ecclesia punit tales; ergo iniuste cum non subsit causa.

Item esto quod medicus laboret ut istum interficiat et uenenum propinet, sicut de facto accidit de uxore cuiusdam que ei uenenum propinauit et credidit se ei mortem intulisse, et contulit salutem quia uenenum potionis expulit uenenum egritudinis. Item alia dedit uenenum et ille non habens tyriacam[29] mortuus est.

Questio. Queritur ergo cuiusmodi penitentia talibus sit iniungenda; auctoritas dicit: tantum facis quantum intendis.[30] Sed par fuit intentio hinc inde; ergo par fuit maledictum,[31] ergo equalis penitentia utrique est iniungenda.

Obiectio. Sed contra:[32] longe plus peccauit qui actuale superaddit homicidium quia magis contempsit, ergo maior est ei iniungenda penitentia.

SOLUTIO. Quod concedimus dicentes quod ille qui et actuale et mentale commisit homicidium magis reus est criminis et ideo maior est ei inungenda penitentia. Illi autem qui non intendit interficere et tamen interficit, nulla pro aliquo crimine iniungenda est ei penitentia quia nullam maculam incurrit eo quod habuit oculum simplicem et sincerum, iuxta illud: *Si oculus tuus simplex fuerit totum*

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[22] Ambrosiaster, *In Ep. ad Rom.* i, 32; PL 17, 66. Cf. *Decretum*, D. 83, c. 3. On this question of *consent* in the decretists, cf. Kuttner, *Kanonistische Schuldlehre*, pp. 41 ff.

[23] Peter Cantor, *De sacramentis* I, 79; *Troyes* 276, fol. 66^{rb}. He refers to: *Enarr. in Ps. lxxxi.* The idea is there but the language is Cantor's.

[24] *Marc.* vi, 27.

[25] Cf. Jerome, *Comm. in Matt.* II, 14; PL 26, 101.

[26] Clement III (1187-1191): Non solum . . . incendarii . . . ad apostolicam sedem . . . Jaffé 16607 (10238); *Compilatio* II^a, II, 18, 8; (c. 19, X, V, 39).

[27] illum *om.* T. For this case in Huguccio and other commentators, cf. Kuttner, *Kanonistische Schuldlehre*, p. 178, n. 1.

[28] Cf. note 27, Cap. I.

[29] tyriacam—an antidote to poison; cf. Ducange VI, 1366.

[30] A common axiom often quoted in: Peter Cantor, *De sacramentis;* e.g. I, 88; *Troyes* 276, fol. 83va.

[31] malefactum T.

[32] contra *om.* T.

corpus tuum lucidum erit;[33] et tamen non sine causa solet tali ecclesia iniungere penitentiam, immo triplici de causa; una est pena pecuniaria que iniungenda[34] est ad paruulos sustentandos quos pater reliquit et uirgines forte nubiles; alia causa est scilicet (fol. 11va) propter facinoris horrorem ut pena unius sit metus aliorum;[35] tercia quia sacerdos debet semper presumere quod aliquo contemptu uel negligentia commisit tale homidicium. Et notandum quod hec auctoritas—tantum facis quantum intendis—est intelligenda cum tali suppletione: si illud quod intendis, exterius operaris. Unde non ualet illa superior argumentatio: utrique par fuit intentio, ergo utriusque par fuit maledictum,[36] quia intentio unius habuit effectum, alterius non.

[Caput VIII. *l. Utrum baptizando iniungenda sit penitentia cum sit extra ecclesiam.*]

Questio. Item obicitur de hoc quod,[1] teste Augustino, tria distinguuntur tempora penitentie: unum ante baptismum, aliud in baptismo, tercium post baptismum.[2] Sed quomodo ante baptismum iniungenda est penitentia illi qui baptizandus est cum adhuc sit extra ecclesiam?

Obiectio. Preterea in baptismate ad quid iniungitur penitentia cum baptismus omnia deleat tam actualia quam originalia? Nec ut dicit Augustinus[3] planctum requirit uel gemitum, et penitentia requirit utrumque; ergo in baptismo nulla iniungenda est penitentia cum per ipsum tollatur et omnis pena et omnis culpa. Eadem ratione nec post baptismum exigitur penitentia ex quo obseruatur baptismalis innocentia.

SOLUTIO. Predicta uerba non sunt Augustini sed ista sunt eius uerba in libro de penitentia:[4] Tres sunt actiones penitentie,[5] una ante baptismum quando cathezizatur in articulis fidei ut in illis instructus de commissis et priori errore peniteat et promittat se nulla flenda amodo[6] committere; hoc enim debet iniungere cathezizator cathecumino et postea assumere debet lauacrum penitentie. Secunda actio penitentie est quando aliquis recidiuauit post baptismum et iniungitur ei penitentia que est secunda tabula post naufragium.[7] Tercia actio[8] est in cotidiana deletione uenialium per fruitionem eucharistie, per aspersionem aque benedicte, per elemosinas et orationes sanctorum;[9] unde illud: *et dimitte nobis debita nostra.*[10] Et notandum quod si Iudeaus aliquis uel quicumque alius accesserit ad baptismum non ualet ei effectus baptismi (fol. 11^{vb}) nisi pro posse suo omnia que per usuras uel alio modo illicite acquisiuit restituat uel opere uel integro saltem affectu. Unde nullus talis, licet cum effusione lacrimarum ad baptismum transuolat, admittendus est nisi cum firmo proposito omnia restituendi.

[*m. Utrum dominus papa possit omnia ad nutum suum disponere.*]

Sunt autem quidam superciliosi et officio palponum functi qui ex secularibus litteris has confixerunt solutiones ad predicta in fauorem magnatum. Dicunt enim quod dominus papa qui habet plenitudinem caritatis[11] potest licite omnia ad nutum suum disponere et sibi ad usum suum usurpare nec tamen inde trahet[12] aut maculam symonie aut rapine.

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[33] *Luc.* x, 34.

[34] Iniungenda *om.* T.

[35] Cf. Augustine, *Quaest. in Matt.* 11, 3; PL 35, 1368; on the principle of the penalty *ad cautelam* implied in the next reason, cf. Kuttner, *Kanonistische Schuldlehre* pp. 228-229, n. 2.

[36] malefactum T.

[1] de hoc quod—quia T.

[2] *Sermo* 351, 2; PL 39, 1537.

[3] Ambrosiaster, *In Ep. ad Rom.* xi, 29: PL 17, 161; *Sent.* IV, 4, 6; Quaracchi II, 770.

[4] This *Liber de penitentia* contained extracts from *sermo* 351 which contains what follows.

[5] *Sermo* 351, 2; PL 39, 1537. *Sent.* IV, 16, 5; Quaracchi II, 843. *Decretum, De poen.*, D. 1, c. 81.

[6] de cetero T.

[7] Cf. note 10, Cap. I.

[8] Pseudo-Augustine, *De vera et falsa penitentia* 4; PL 40, 1116.

[9] Augustine, *Ep.* 265, 8; PL 33, 1089; Innocent III, *De sacro altaris mysterio* IV, 44; PL 217, 885.

[10] *Matt.* vi, 12.

Obiectio. Eodem modo, ut dicunt,[12a] principes terrarum omnia bona subditorum suorum ad libitum suum licite possunt disponere et sibi assumere sine nota alicuius rapine quia omnia bona subditorum sua sunt, ut dicunt, et cum sua sibi uindicant non rapiunt aliena. Et hoc probatum est[13] per seruos quos dominus emit cum bonis suis uel quibus committit sua quando aliquam terram quam per uictoriam sibi subiugauit efficit coloniam.[14] Cum ergo isti hiis adulatoribus adinuentionibus inflammant[15] magnates ad rapiendum, nonne addunt oleum camino et calcar equo? Constans est quod si apponis ignem ad comburendam ciuitatem, incendiarius es. Si equum[16] adeo stimules quod eum interficias, nonne teneris ad restitutionem? Sed anima istius principis longe preciosior est in conspectu dei quam talis ciuitas uel equus. Ipsa enim est ciuitas et templum et sedes tocius trinitatis. Si ergo talis incentor accedat ad te in foro penitentiali qui longe est perniciosior quam publicus incendarius, nonne teneris iniungere in penitentia ut omnia pro posse suo restituat in solidum?

Obiectio. Quod sic probatur: tu iniungeres cuilibet incendario ut resarciret[17] in solidum damnum quod accidit per [eius][17a] incendium [sed longe maius damnum accidit per incendium][18] huius prave doctrine, ergo multo fortius debes iniungere isti, qui per incendium infecte doctrine istum magnatem et totam eius substantiam destruxit, ut omnia damna restituat quam illi qui minus infert damnum; quia si aliquis plurimum punitur pro minore crimine longe melius (fol. 12^{rb}) est puniendus pro maiori precipue pro illo qui scindit unitatem[19] ecclesiasticam quod incentor talis facit. Teste Salomonis in proverbiis: *sex sunt que odit deus; septimum detestatur anima eius, scilicet peccatum eius qui inter fratres seminat discordiam;*[20] quod facit qui hunc magnatem incendit ad infestandos subditos.

SOLUTIO. Hiis rationibus et multis aliis que induci possunt dicimus quod omnis incentor talis, qui inflammat magnates ad rapiendum, tenetur ad restitutionem omnium eorum que ad eorum suggestionem uel occasionem[21] rapta sunt, sicut ostensum est. De domino papa dicimus quod dum[22] aliquid faciat contra fidem uel mores non est audiendus in hoc, quicquid ipsi asserant. Unde[23] si per ipsum introducatur aliquis in ecclesiam aliquam contra eius libertatem et antiqua eius instituta que approbata sunt, symoniam committit[24] quia sic approbatam ecclesie libertatem et sanctorum patrum uiolat instituta que immutare non potest nisi cognita iusta causa et generali concilio conuocato. Similiter de principe terre dicimus quod nec milites sub eo constitutos nec burgenses nec censuales eius homines ultra debita[25] predecessorum suorum instituta aut talliis aut exactionibus opprimere debet, iuxta illud euangelicum Iohannis Baptiste *Nichil ultra quam scriptum est*;[26] id est secundum iura et consuetudines regni approbatas exigatis, neminem concutiatis, nemini conuitia inferatis; estote contenti stipendiis iuris. Si tamen princeps terre emerit seruum, ipse et omnia bona sua domini sunt, de quibus ad arbitrium suum disponere potest tanquam de suis. Sed secus est de subditis predictis. Unde dicimus quod cum Iudei nichil habent hodie nisi de usura, princeps terre non potest ea sibi confiscari nec aliquorum qui nichil habent nisi ex rapina, nisi ad opus spoliatorum; propter hoc enim gladium portat ut ablata restituat spoliatis in uindictam quidem malorum et laudem bonorum.[26a] Similiter dicimus de seruo feneratoris Iudei et raptoris quod compellendus est ad restitutionem in solidum si consenserit aut aliquo[27] auxilium prestiterit usure aut rapine exercende.

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[11] potestatis T.

[12] incurrat T.

[12a] For the views expressed here, i.e. of twelfth century jurists, on property, cf. R. W. and A. J. Carlyle, *The Political Theory of the Roman Lawyers and the Canonists* (A History of Mediaeval Political Theory in the West II, London, 1919), pp. 44 ff. On the authority of the pope, according to late twelfth century commentators on the *Decretum*, and the views of Innocent III on the plenitude of power inherent in his office, cf. J. Rivière, *Le problème de l'église et de l' état* (Paris, 1926), pp. 31-36.

[13] probant T.

[14] colonorum T.

[15] inflant T.

[16] alterius *add.* T.

[17] restituat T.

[17a] eius *om.* B.

[18] sed longe maius damnum accidit per incendium *om.* B.

[19] scindit unitatem—incendit ciuitatem T.

[20] *Prov.* vi, 16.

[21] occupationis T.

[22] si T.

[23] B in margin: *Senon' arch.* That is to say that the followng is the opinion of Peter of Corbeil, formerly magister at Paris, Archbishop of Sens since 1200. For some notions on his teachng and his works, cf. G. Englhardt, *Die Entwicklung der dogmatischen Glaubenpsychologie in der mittelalterlichen Scholastik* (Beiträge XXX, 4-6 Munster i. W., 1933), pp. 116 ff. Also same author's article on Peter of Corbeil in Herder's *Lexikon.*

[24] incurrit uel *add.* T.

[Caput IX. *n. De illo qui indigne promotus est.*]

Sequitur de illo (fol. 12^{rb}) casu quo tota die percellitur ecclesia. Contingit enim frequenter quod ad forum penitentialem accedit aliquis cuius radix corrupta, rami putridi fructus infectus, in quo est demonium quod *nec oratione nec ieiunio expelli*[1] potest quia cum promotus sit ad prelationem intuitu tantum Cesaris aut sceleris aut sanguinis et nunquam expendit bona pauperum in pias causas sed aut in superfluis commessationibus et potionibus aut hystrionibus aut ceteris personis penitus indignis aut in phaleris[2] aut variis[3] mutationibus; constat quod ille de cuius patrimonio hec dissipauit[4] uiuendo luxuriose petet ab eo *rationem uillicationis sue.*[5]

Questio. Si ergo talis dispersor[6] uolens per omnia satisfacere et digne penitere accedat ad te, quid dices ei? Iniunges ei ieiunia et orationes, elemosinas; probatur quod per ista non expellitur *demonium illud mutum*[7] quia uenenum illud pertingit usque ad radicem, ramos et fructus quia tota arbor in eo infecta est; nam qui plantationem[8] ei contulit, maledictionem dei incurrit; iuxta illud Ieremie: *Maledictus qui opus dei facit fraudulenter.*[9] Episcopus autem qui ei contulit archydiaconatum fraudulenter eum ad curam tot animarum promouit cum indignus omnino esset et iniusta causa promotus. Item episcopus scit quod *omnis plantatio quam non plantauit pater celestis eradicabitur.*[10] Item apostolus ad Timotheum: *Constitue presbyteros ydoneos*;[11] interlinearis Augustinus dicit:[12] ydoneos qui premineant uita, scientia, facundia; sed iste non preminet uita nec scientia nec facundia, ergo omnino inutilis est et hoc scit tam conferens quam accipiens prelationem, ergo uterque in hoc maxime delinquit.

Obiectio. Item episcopus scit quod cum dat isti tam indigno hanc prelationem, fit opus sinistre et non dextre, immo sinistra absorbet dexteram quod est contra euangelicum illud: *Te faciente elemosinam nesciat sinistra quid faciat dextera.*[13]

Obiectio. Preterea qui accipit indigne cum sciat se indignum nec sufficientem ad tantum onus debet credere Ieronimo qui ait: Si talentum tibi commissum nescis multiplicare, reporta illud ad (fol. 12^{va}) mensam domini et trade illud ei qui sciat multiplicare.[14] Sed iste se omnino scit insufficientem ad tale talentum multiplicandum, ergo debet instituere discretum pro eo et relinquere talentum illud.

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[25] debita *om.* T.

[26] Cf. *Luc.* iii, 13-14.

[26a] Cf. *Rom.* xiii, 4; I *Pet.* ii, 14.

[27] modo *add.* T.

[1] Cf. *Matt.* xvii, 20.

[2] palatiis T.

[3] uestium *add.* T.

[4] disponit T.

[5] *Luc.* xvi, 12.

[6] dispersor—adeo dispersus T.

[7] *Luc.* xi 14.

[8] prelationem T.

[9] *Jer.* xliv, 10.

[10] *Matt.* xv, 13.

[11] II *Tim.* ii, 2.

[12] As quoted by the interlinear gloss; cf. Ambrosiaster, *Comm. in Ep. II ad Tim. ii*, 2; PL 17, 515. Peter Cantor, De *sacramentis* I, 76; *Troyes* fol. 63^{vb}: ydonei dicit Glosa vita scientia facundia.

[13] *Matt.* vi, 3.

Obiectio. Item si esset hic peritissimus medicus et puer sine omni sensu ante egrotum qui est in articulo mortis propter ingruentem egritudinem quam ipse medicus discretus scit curare, puer autem nichil inde sciens se intrudat, reiecto medico, nonne ridiculosus haberetur? Sed idem accidit hic. Ecce ad manum est litteratissimus et dignissimus qui reciperet dignitatem, puer fatuus et insulsus introducitur, sapiens uero reicitur. Puer omnes interficit egrotantes in anima, sapiens omnes sanaret si admitteretur; cui ergo hec mortes imputantur? Nonne instituenti episcopo et puero sic intruso? Cum ergo talis tam enormiter institutus in pluribus prelationibus plurium ecclesiarum, non in regimen sed in confusionem infinitarum animarum, qui omnia bona pauperum dilapidauit uiuendo luxuriose accedit ad te in foro penitentiali ut digne peniteat et per omnia satisfaciat, quid dices ei? Nonne iniunges ut omnibus abrenuntiet, et omnia pro posse suo restituat? Hic non potes incedere media uia cum uideas eum percussum ulcere pessimo *a planta pedis usque ad uerticem capitis.*[15]

SOLUTIO. Nec in expositione ueteris uel noui nec in canonibus, aliud consilium hic addere[16] possumus nisi illud quod de filio prodigo legimus qui cum non uideret sibi esse salutem in regione longinqua pascendo porcos nec saturitatem inueniret in siliquis rediit ad amplexus patris contempnens omnem preactam uitam.[17] Sic iste qui bona pauperum de patrimonio crucifixi in illicitis uel superfluis[18] expendit et qui non gratis sed contra canonum instituta[19] est intrusus ad prelationes, debet si digne uult[20] satisfacere et esse in statu saluandorum omnes prebendas resignare sine spe rehabendi et tunc poterit dominus papa uel episcopus ei gratis aliquam earum conferre de nouo. Que autem in illicitis dissipavit in damnum pauperum preter artam et honestam sui et suorum (fol. 12^{vb}) sufficientiam tenetur, si potest, resarcire in recompensationem pauperum et si aliquid pinguius ei accreuerit, cum ad presens non potest, postmodum in pauperes effundat. De episcopo uero qui scienter tam indigno contulit tot et tales amministrationes, dicimus quod reus est omnium animarum que per incuriam eius et insufficientiam mortue sunt et debitor est eorum que iste ita dissipauit, si ita est quod sciuerit[21] hoc et subuenire potuit ruine iminenti et[22] sciens et prudens hoc commisit; tamen hic est inuenire casum ubi ille, qui accipit prelationem a prelato indigne uiuente, non tenetur ad restitutionem ubi aliquantulum sciolus est ille qui recipit uel probate uite. Sed qui dat nulla principali causa nisi intuitu sanguinis aut alia extraordinaria causa, non habito respectu ad deum nisi secundario, symoniam committit. Hic est enim symonia ex parte dantis non accipientis.

[o. *De eodem demonio in claustro.*]

Questio. Item predictum demonium quod nec oratione nec ieiunio expellitur non solum cathedrales ecclesias occupat sed et claustra. Contingit enim sepe sicut in multis hodie locis uidemus quod claustralis deprehendit omnia que uestit, que comedit, omnia predia, omnes redditus quos habet monasterium uel fere omnes esse aut de fenore aut de rapina aut de symonia aut alio modo illicite acquisita. Cum ergo meticulosam et cauteriatam[23] habeat super hoc conscientiam, accedit ad te qui es eius episcopus uel ad cardinalem uel ad dominum papam et querit in foro penitentiali quid sit ei agendum; tu ad cuius forum accedit, quid dices ei? An dicas ei ut commoretur an ut exeat, an ut credat consilio domini abbatis? Si dicas quod commoretur,[24] occurunt ei auctoritates et eum undique pungunt. Una est illa Salomonis in prouerbiis: *Victime impiorum abominabiles sunt deo.*[25] Et iterum ibidem dicitur: *Honora dominum de tua substantia,*[26] id est non aliena, non ex raptu. Iterum: *Venientes autem uenient cum exultatione portantes manupulos suos.*[27] Augustinus similiter exponit 'suos' id est non alienos.[28] Item in Ysaia sub persona Christi dicitur: *Ego sum diligens iudicium et odio habens rapinam in holocaustum.*[29] Item in Leuitico habetur: *Omne morticinum et* (fol. 13ra) *raptum a bestiis non comederis.*[30] Morticinum est omne illud quo per mortale peccatum acquiritur; a bestia raptum id est a bestiali quocumque. Et Tobias ait: *Nos filii sanctorum sumus; non licet nobis tangere aut comedere aliquid de rapina.*[31] Per has et similes auctoritates medulliter punctus, dicet tibi quod non potest sana conscientia ibi morari precipue cum ibi non inueniat *nisi mortem in olla et amaritudinem in aquis;*[32] et nonne, si potest, queret farinulam Helysei[33] ut mors tollatur ab olla? Hoc est omne cauterium a conscientia et salem similiter Helysei,[34] non feneratoris, ut saluentur aque steriles in Iericho,[35] id est infecti in claustro.

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[14] Locus non reperitur.
[15] *Is.* i, 6.
[16] attendere T.
[17] *Luc.* xiv, 11-32.
[18] bona pauperum *add.* B.
[19] decreta T. Cf. *Decretum*, C. 1, q. 7, c. 2.
[20] penitere et *add.* T.
[21] sciuit T.
[22] quia T.
[23] Cf. I *Tim.* iv, 2.

Questio. Quid ergo dices isti? Si dicas quod exeat, ergo cum non possit redire ad seculum quia *nemo mittens manum suam ad aratrum et respiciens retro aptus est regno dei,*[36] oportet eum transire ad honestius claustrum uel heremitorium. Sed esto quod nullum[37] inueniat claustrum nisi tali rapina infectum nec aliquod heremitorium nisi latronibus obsitum uel forte in tali regione est ubi nec heremitorium nec alterius modi inuenit claustrum.

Obiectio. Quid ergo si transmittit eum ad consilium abbatis? Abbas eum omnino interficere nitetur cum ipsemet infectus sit, dicens ei: Si tu exis uel factis nostris obmurmures, percellam te sententia excommunicationis et merito cum ouis non debeat resurgere contra pastorem nec filius aduersus patrem. Preterea sententia excommunicationis sicut nosti siue iuste siue iniuste lata fuerit a pastore tenet ut dicit canon.[38] Item nonne scis quod sumus Hebrei, id est uere transitores, et feneratores sunt Egyptii? Et auctoritas dicit: Spoliandi sunt Egyptii et ditandi sunt Hebrei.[39] Item nobiscum est euangelium ubi dicitur: *Facite uobis amicos de mammona iniquitatis,*[40] et nos recepimus iuxta illud amicitiam cum feneratoribus per mammonam iniquitatis scilicet per usuram. Item nobiscum est apostolus qui ait: *Nichil interrogantes propter conscientiam.*[41] Sic ergo non exibit; quid ergo?

[*p. De monasterio quod omnes monachos per interuentum pecunie suscepit.*]

Questio. Item alius lugubris est casus et quasi insolubilis qui late infinitam dat stragem animarum. Ecce monasterium quoddam quod omnes monachos quos habet non gratis sed per (fol. 13^{rb}) interuentum pecunie suscepit, nunc tandem cognoscit abbas cum toto capitulo se cum omnibus labem contraxisse symonie, et modo omnes sunt in articulo mortis uel instat solemnitas paschalis et uolunt condigne satisfacere de omnibus ad arbitrium tuum qui est prelatus eorum; quid consules eis?

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[24] moraretur T.
[25] *Prov.* xv, 8.
[26] *Prov.* iii, 3.
[27] *Ps.* cxxv, 6; ibi sic exponit illud Augustinus tua substantia *add.* T.
[28] Cf. *Glossa Ord. in Ps. cxxv,* 6: PL 113, 1046.
[29] *Is.* lxi, 8.
[30] *Lev.* xxii, 8.
[31] *Tob.* ii, 17, 21.
[32] IV *Reg.* iv, 40-41.
[33] III *Reg.* xvii, 13-14.
[34] IV *Reg.* ii, 20.
[35] Cf. IV *Reg.* ii, 19.
[36] *Luc.* ix, 62.
[37] nullum in nullum B.
[38] *Decretum,* C. 11, q. 5, c. 12.
[39] Cf. *Decretum* C .14, q. 5, c. 12; Augustine, *Quest. in Ex.* 9, 39; PL 34, 607.
[40] *Luc.* xvi, 9.
[41] I *Cor.* x, 25, 27.

Obiectio. Tu scis quod indigne omnes introierunt et quod nichil habent nisi per symoniam acquisitum et scis quod non expellitur predictum demonium nisi plene fiat restitutio si potest; ergo debes eis dicere ut omnes abscedant nudi potius quam ibi pereant. Sicut uir sanctus consuluit de facto qui per reuelationem cognouit quod quotquot monachi erant in tali quodam fenebri monasterio descendebant in infernum et fenerator qui fundauit illud iam mortuus et ibidem[42] sepultus de nocte demonio agitatus fustigauit omnes in claustro et in choro singulis noctibus[43] quousque illum a loco illo eiecerunt; unde tandem per eandem reuelationem recognoscentes se non aliter posse saluari, nudi aufugiunt et locum penitus subuertunt.

De hiis quidam uolunt sibi blandientes sophystice soluere dicentes quod non est aliqua abbatia in mundo ubi non sunt alique pure elemosine et ideo illa bona eorum mixta sunt partim ex fenore partim ex licite acquisitis et ideo non est exeundum, immo possunt ratione illorum bonorum que licite sunt acquisita ibi commorari.

Obiectio. Sed contra, si tibi proponeretur aliquod poculum commixtum ex uino et ueneno non illud gustares propter periculum uite corporalis, multo magis ut[44] periculum anime uites,[45] non debes sumere hec commixta in usum tui, precipue ubi animus tuus inclinatur ad hoc quod credas ista partim esse de licitis partim de illicitis acquisita.

SOLUTIO. Ad ista sine preiudicio sicut possumus respondemus. Ad primum sic. Ille claustralis in predicta angustia constitutus aut scit pro certo quod omnia bona monasterii illicite sunt acquisita et abbatem et alios claustrales esse incorrigibiles aut cogitabit bona illorum esse commixta, quedam scilicet de illicite alia de licite acquisitis. In primo casu dicimus quod potius nudus nudum sequatur Christum et potius exeat *de terra et cognatione sua*[46] ad honestum claustrum[47] religionis uel ad heremitorium uel ad quemcumque (fol. 13^{va}) locum regulam beati Benedicti pro posse suo semper seruans [uel][47a] faciat de pectore claustrum et mendicet potius pro Christo quam maneat in sodomis; et si abbas eum super excommunicet hoc, potius excommunicatus abscedat quam abbati consentiat quia auctoritates quas ipse pro se introducit contra ipsum potius[48] sunt. Nam illa prima auctoritas: spoliandi sunt Egyptii et ditandi sunt Hebrei, non habet locum in hoc casu, sed ubi Iudei qui diu seruierunt luto et latere privati sunt debita mercede ab Egyptiis et ita auctoritate domini presidentis acceperunt *uasa aurea et argentea et uestes pretiosas*[49] in expensa et recompensatione mercedis; hoc enim non fuit furtum, sed potius a deo imperatum.[50] Sed in contrarium precepit dominus scilicet ut nunquam cum raptore seu feneratore uel symoniaco communicemus raptum sed potius studeamus ut spoliatis restituatur ablatum.

Item sequens auctoritas hec scilicet: *facite uobis amicos etc.* similter est contra abbatem et omnes raptores feneratorum quibus dicitur ut *faciant sibi amicos de mammona iniquitatis*, scilicet eam restituendo. sicut enim exponitur ab Augustino;[51] tunc enim efficimur amici spoliatorum cum restituimus mammonam iniquitatis scilicet per iniquitatem acquisita. Alia est expositio, teste Augustino,[52] ut dicatur mammona iniquitatis id est mammona inequalitatis que per inequalitatem mercimonie est acquisita ex qua nobis facimus amicos cum ea pauperibus erogamus ut deus illustret cor nostrum ad penitentiam.[52a] Tercia auctoritas quam obiciunt scilicet illa apostoli: *nichil interrogantes propter conscientiam*, non habet locum hic sed in casu quem ponit apostolus scilicet de illis qui coram infirmis comedunt de ydolotito a quibus non est disceptandum uel inquirendum de proposito cibo utrum sit ydolotitum necne, ne infirmi uidentes nos illud comedere credant nos aliquam uenerationem ydodo impendere et in hoc scandalizabuntur multi. Si uero speret predictus claustralis abbatem et aliquos procuratores domus predictas rapinas eius iugi ammonitione et assidua exhortatione uelle restituere ad tempus, potest in claustro morari ut agat causam (fol. 13^{vb}) spoliatorum et tunc non comedet illa de auctoritate abbatis uel aliorum in capitulo qui nichil iuris habent in illis, sed de concessione spoliatorum qui non denegant mercedem suam condignam procuratoribus suis quia *dignus est operarius mercede sua*.[53] Unde dominus comedebat cum publicanis et peccatoribus[54] ut per eius predicationem ageret causam spoliatorum sicut accidit de Zacheo qui audita eius predicatione ait: *Si aliquid abstulerim restituam in quadruplum*.[55] Si uero commixta sunt omnia et confusa tanquam *misso lapide in aceruum Mercurii*[56] tunc sicut dicitur in euangelio, assumat uentilabrum et mundet aream[57] claustri et conscientie, ut paleas et quisquilias, hoc est dona feneratorum et raptorum, reiciat et grana scilicet pura et munda sibi assumat. Si dicat quod non poterit quia nesciet que sunt de granis que de paleis, faciat quod potest ut estimatiue hoc faciat et nichil quantum in se est omittat de contingentibus. Si autem abbas uiolenter uoluerit eum expellere nisi indifferenter comedat et licita et illicita, declinet in quantum potest illicita pedetentim propter scandalum alliciendo plures secum ad contradicendum abbati in hoc quia *magis est obedeiendum deo quam hominibus*.[58] Si autem omnino hic solus sit et resistere non possit, sequatur conscientiam quia omne quod fit contra conscientiam edificat ad gehennam;[58a] exeat ergo potius quam obscena illa comedet contra deum, sicut fecerunt septem Machabei qui uiui frixi sunt quia noluerunt comedere suillam carnem prohibitam in lege.[59]

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[42] ante altare *add.* T.
[43] singulis noctibus *om.* T.
[44] ubi T.
[45] uides T.
[46] Cf. *Gen.* xii, 1.
[47] alterius *add.* T.
[47a] ut B.
[48] quam pro seipso *add.* T.
[49] Cf. *Ex.* xii, 35-36.
[50] Cf. *Decretum*, C. 14, q. 5, c. 12; Augustine, *Quaest. in Ex.* 9, 39; PL 34, 607.
[51] *Sermo* 113, 2; PL 38, 648.

[Caput X. q. *De uxore feneratoris*.]

Questio. Similis est casus de uxore feneratoris qui nichil habet nisi ex fenore et precepit uxori ut preciosis induatur uel lautioribus uescatur; ipsa uero attendens quod omnia hec que de rapina sunt, ei sunt interdicta, eligit potius mendicare quam illis in perniciem sui uti. Quid ergo dices ei in confessione? Si recedit, prelatus eius qui consensit uiro suo eam statim excommunicat. Si cohabitat cum uiro oportet eam uiuere de rapina cum uiro, cum uir non patiatur eam mendicare, nec quia ualetudinaria est potest ex labore uictum sibi querere nec dotem habet nec aliud unde (fol. 14ra) honeste uiuat.

SOLUTIO. Idem hic dicimus quod supra de claustrali; ex quo enim uxor uidet quod uir eius nichil habet nisi de rapina uel usura nec ipsa ex se nec aliquid ex labore potest acquirere uel alio modo honeste cum uiro, abscedat ut debet et tamen non denegabit uiro debitum quando ipse petierit, immo ueniens ad eum quotiens[1] eam mandauerit[2] et quocumque honesto modo potest aut mendicando aut alio modo interim sibi uictum querat. Si uero sperat quod per eius presentiam debeat uir resipiscere, commoret cum eo ad tempus ut agat causam spoliatorum. Si eum uideat tandem incorrigibilem, recedat ut supra. Si autem uideat bona licita commixta bonis illicite acquisitis, habeat uentilabrum ad discernenda hec ab illis ut supra scilicet estimatiue pro posse suo. Si autem non permittatur hoc facere sed compellatur ad illicita, recedat potius et patienter toleret sententiam excommunicationis iniuste latam in eam propter hoc. Si autem dotem habeat aut dotalicium de eo uiuat estimatiue pro quantitate dotis uel dotalicii.

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[52] Cf. *Enarr. in Ps. xlviii*, 12: PL 36, 552.

[52a] *Sent*. IV 16 3; Quaracchi II, 842; *Decretum, De poen*., D. 5, c. 6.

[53] *Luc*. x, 7.

[54] *Matt*. ix, 11.

[55] *Luc*. xix, 8.

[56] *Prov*. xxvi, 8.

[57] Cf. *Matt*. iii, 12.

[58] Cf. *Acta* v. 29.

[58a] Cf. note 23a, Cap. IV.

[59] II *Mach*. vii, 1-23.

[1] quando T.

[2] petierit T.

Ad sequens dicimus quod si constat monasterio omnia bona que habet acquisita esse per symoniacum ingressum omnium ibi commorantium credimus esse distinguendum quia locus aut est carceris aut uoluptatis, si carceris sicut in ordine Cysterciensi non oportet inde monachos uel monachas exire quia non arctiorem inuenirent locum uel carcerem; unde ipsi non emerunt honorem sed honus, et ideo doleant quia extraordinarie introierunt et arctiorem in quantum possunt agant penitentiam. Bona autem illorum aut sunt mobilia aut immobilia; si mobilia ea resignentur in manus episcopi loci uel metropolitani, uel si ipsum suspectum habent, resignent in manus alicuius persone ecclesie qui illa bona neque det emptoribus neque uenditoribus quia et isti et illi sicut dicit canon[3] se inde fecerunt indignos; et si uideat illam ecclesiam egere sicut et alias, potest isti ecclesie sicut et aliis conferre de bonis illis prout uiderint expedire. Si uero sunt immobilia uel illa redimat per alia bona licite acquisita uel resignet in manus illius persone ut inde disponat sicut ius dictitat. Si uero claustrum illud est locus uoluptatis sicut hodie ur(fol.14^{rb})bana claustra que, ut dicit Ieronimus: rubentes pretendentes buccas regalibus utuntur deliciis,[4] tunc quia non honus sed honor emptus est omnes statim abscedant et arctiora monasteria querant uel loca solitudinis aut singuli se in locis secretis recludant ubi districtiorem penitentiam peragant uel potius mendicent quam de contagione symonie comedant et uiuant.[4a]

[r. *De matrona que de alieno uiro concepit.*]

Questio. Item est casus qui late patet in foro penitentiali ex quo multa ecclesie imminet confusio. Puta: matrona est nobilis attendens se non posse de uiro concipere aut supponit puerperium aut de alieno uiro concipit et mentitur illum spurium filium esse heredem et sic exheredat naturales heredes per dolum[5] suum. Tandem comperiens se plurimum in hoc deliquisse accedit ad forum penitentialem et tibi omnia confitetur. Quid ergo consules ei qui eius es sacerdos aut pater spiritualis, an dicas ei ut omnia reuelet uero heredi et filio spurio annon?

Obiectio. Tu scis quod si reuelet illis totum factum, ipsa suscitabit infinitas guerras et inexorabiles discordias inter eos et subuertentur occasione illius regna, claustra et ecclesie, et infinita contingent homicidia quorum omnium ista erit efficiens causa per suam reuelationem. Si tacet, crimen fit in preiudicium ueri heredis et in augmentum malicie illius spurii. Et sic ipsa non adhibet omnem diligentiam quam potest ad hoc ut purgatur fraus ipsius et ut restituantur illa que ipsa per dolum uero heredi abstulit; ergo adhuc manet rea illius criminis; ergo uere non penitet.

SOLUTIO. Matrona, cum occultum sit crimen eius et putatiui uel spurii filii sui non debet illud prodere nisi, ut dicit Augustinus[6] illi qui prodesse et non obesse possit. Eat ergo ad sacerdotem proprium et reuelet ei totum factum. Sacerdos autem in foro penitentiali[7] debet ei iniungere ut modis omnibus laboret ad restituendam hereditatem proprio heredi quam per dolum fecit ei auferri et hunc modum assignet ut uocet episcopum loci uel metropolitanum uel cardinalem uel tandem accedat ad dominum papam et coram hiis exposita rei ueritate[8] supplicet illis ut ei consilium et auxilium impendant ad faciendam predictam restitutionem, aduocantes (fol. 14va) predictum filium putatiuum uel spurium coram se et sub sigillo confessionis ei coram matrona rei ueritatem uel sine matrona si uideant[9] expedire, exponant et eam compellant ut coram eo iuret, tactis sacris, quod non aut odio aut prava intentione sed tantum propter salutem anime sue confessa est euentum predictum et omnibus aliis modis laborent ad restitutionem. Si autem filius ille putatiuus uel spurius audiat eos, tanquam omnia relinquens, ipse assumat longinquam peregrinationem aut claustrum aliquod intret et omnia relinquat in manu ueri heredis et si filium habeat eum secum adducat ut uerus heres in plenam mittatur possessionem et tamen uero heredi taceatur ueritas propter sepeliendum scandalum utriusque; et de omnibus bonis illis que expendit ex quo in hereditatem illam est admissus, satisfaciat in quantum potest uero heredi per manus sacerdotis uel episcopi loci et nesciat uerus heres a quo conferantur illi bona illa que restituuntur ei per manus sacerdotis. Sicut si aliquis furatus est rem aliquam, fur accedere debet ad sacerdotem et facta restitutione in manus sacerdotis de re furtiua ammonere debet sacerdotem ut eam restituat uero possessori uel heredi eius. Sacerdos tamen non debet indicare personam illam que furata est rem illam. Si autem matrona illa nec per se nec per alium potest inducere filium illum spurium ad faciendam aliquam restitutionem tunc ipsa plurimum peniteat et super hoc doleat et si habeat aliqua bona de dotalicio uel aliunde de illis per manus sacerdotis uel alicuius persone honeste faciat omnem quam potest uero heredi restitutionem; et si non habet et aliquid ei in pignus[10] accreuerit de eo similiter restituat et semper sit in proposito restituendi.

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[3] *Decretum*, C. 1, q. 3, c. 10.

[4] Cf. *Adv. Jovinianum* II, 21; PL 23, 329; II, 36; *ibid.* 349.

[4a] sumant T.

[5] actum T.

[6] Cf. *Ep.* 98 *ad Bonifacium* 1; PL 33, 359. *Decretum*, C. 1. q. 4, c. 7-8.

[Caput XI. *s. De sophistica filia potentis que claustrum edificauit.*]

Questio. Item contingit de facto casus quidam longe mirificatior et difficilior. Filia cuiusdam prepotentis unica heres patris sui adducta est cum esset iuuencula in regionem longinquam ubi defuncta est. Alia simillima ei hoc attendens, sub nomine ipsius rediens ad patrem predicte iuuencule mentiens se esse filiam eius, recepta est tanquam (fol. 14^{vb}) heres eius; que tandem timens sibi periculum imminere pro tanto dolo, predia et bona omnia patrimonialia que potuit, in locum religionis deputata collegit plures ibi sanctimoniales sub abbatissa instituit et ipsa in eadem domo sub habitu religionis sicut et alie militauit. Tandem ducta penitentia accedit ad forum penitentiale [rei][1] euentum per ordinem exponens, queritur quid consulet ei sacerdos? Constat quod omnia bona illius monasterii ista per dolum rapuit uero heredi, ergo tenetur omnibus modis ad hoc quod ei fiat restitutio. Preterea in hoc plus peccauit quod bona ista aliis obligauit que omnia sunt uocata[2] et deputata religioni. Preterea abbatissa huic restitutioni nullatenus consentiet neque capitulum quia non credent ei in hiis. Sed esto quod ipsa iuret ei quod huiusmodi dolus intercessit[3] uel alio modo certificet eam super hoc, quid faciet abbatissa et capitulum? Item quid faciet metropolitanus uel princeps terre cuius homo ligius[4] debet esse heres et per quem bona eius dolose uel uiolenter ablata debent ei restitui?

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[7] spirituali T.
[8] rei ueritate—uoluntate T.
[9] uideatur T.
[10] in pignus—pinguius T.

[1] ei B.
[2] notata T.
[3] quod intercessit *om.* T.
[4] regius T.

Preterea cum ipsa censeatur alio nomine, queritur utrum ei unquam[5] ualuerunt preces effuse pro illa.

SOLUTIO. Tripliciter peccat raptor uel fenerator. Primum plurimum cum rapit. Secundo plus cum rapinam in damnum spoliatorum retinet. Tercio adhuc plus cum rapinam aliis obligat, sicut fenerator qui eam obligat filie in nuptiis eius uel principi terre uel domui religiose; et ideo plus peccauit predicta iuuencula quando bona aliena monasterio obligauit quam prius cum ea proprio rapuit heredi. Dicimus ergo quod sacerdos debeat ei iniungere ut ad faciendam restitutionem uero heredi modis omnibus nitatur[6] uel per se uel per abbatissam uel quemcumque maiorem. Monasterium uero cognita rei ueritate tenetur omnia resignare uero heredi; uel ei satisfaciat[7] per omnia[8] et quelibet se transferre ad aliud monasterium uel locum aliquem sibi eligere solitarium et potius mendicare quam in predicto statu manere nisi concedatur eis locus ille a vero herede. Bona siquidem prius ab eis consumpta tenentur si possunt modis omnibus restituere. Illa siquidem propter dolum et propter (fol.15ra) tantam aliorum confusionem que eius accidit occasione in artius retrudatur monasterium et longe asperiorem penitentiam ad arbitrium discreti sacerdotis peragat. Princeps uero et episcopus loci illius et etiam metropolitanus ad hoc debent niti ut satisfactio et uera restitutio proprio fiat heredi. Preces siquidem ille sophistice: si affectus orantium referantur personaliter ad illam potest illi ualere ad habilitatem gratie; si autem sic fiat oratio: oremus pro fundatore huius domi uel pro filia heredis—nichil ei ualet.

[*t. Quid consulendum sit cyrurgicis, aduocatis etc.*]

Questio. Post hoc queritur quid consulendum sit cyrurgicis, physicis, aduocatis, mangonibus,[9] procuratoribus turpitudinum, lenis et lenonibus, adulatoribus et detractoribus, recurrentibus ad forum penitentiale. Hii enim quandoque tanquam incerti de flagitiis que perpetraverunt confitentur quandoque certi. Accedit enim cyrurgicus confitens se calculosos sepe incidisse et multos post incisionem eius mortuos fuisse et dicit se nescire utrum fuerit occasio mortis illorum uel non; quam satisfactionem iniunget sacerdos huic dubie confitenti sic? Preterea asserit quod calculosus mortem, si fuerit obsecutura, ei condonauit et sic de uoluntate ipsius tractus eum incidit et sic statim mortuus est; queritur ergo utrum ei imputanta sit mors eius?

Questio. Similis est questio de physico qui confitetur sacerdoti tanquam dubius de homicidio; ipse enim attendit se insufficientem ad hanc egritudinem curandam et tamen propinat ei potionem nesciens an uita an mors sic ex ea subsecutura; egrotus uero post preceptam potionem statim moritur. Si uero discretior medicus manum apposuisset non esset mortuus. Sic[10] queritur ergo utrum iste sit reus homicidii cum sola cupiditate tractus intrusit se in tantum periculum. Quid iniunget tali sacerdos in confessione cum Clemens tercius in quadam decretali noua: *Ad aures*, arceat tales a promotione?[11] Item aduocatus attendens se insufficientem, tantum salarii cupiditate tractus, prosilit in defensione alicuius qui iustam habet causam que periclitatur in manibus eius quia longe fortior et argutior in aduersa parte superuenit qui non utitur firmatis silogismis sicut ille; immo (fol. 15^{rb}) tot et tam efficaces proponit allegationes quod iudex tandem sentiens sententia pro illo qui iniustam habet causam;[12] nonne hic uterque istorum est reus? Unus quia, quod iniustum est, tuetur; alter quia cum sit insufficiens ad partem iustam protegendam spe mercedis lectus[13] se ad hoc introducit.

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[5] unquam *om.* T.
[6] laboret T.
[7] satisfacere T.
[8] ad libitum *add.* T.
[9] maioribus T.
[10] sic *om.* T.

[11] Clement III, *Ad aures nostras . . . ascendas* (1187-1191); Jaffé 16570 (10204); *Compilatio* II^{a}, II, 8, 2; (c. 7, X, I, 14).

[12] et contra illum qui iustam causam habet *add.* T.

Questio. Eadem questio de indiscreto tutore pupilli sub quo omnia bona pupilli dilapidantur propter insufficientem eius defensionem. Similis est questio de prelato de principe et de quolibet insufficiente ad regnum ex cuius insufficientia omnia bona subditorum periclitantur sub eo. Item dum leno et lena et quarumcumque turpitudinum procuratores accedunt ad forum penitentiale et confitentur se has et illas procurasse turpitudines, aut focarias occulte inducendo aut cetera immunda machinando, ut illis placerent et sic prebendam unam aut aliquam pecuniam ab eis emungerent, nonne isti rei sunt omnium istorum criminum; et si infinita homicidia per eos sunt procurata nonne rei sunt omnium iuxta illud: consentientes et agentes par pena constringit.[14]

Questio. De mimis et detractoribus et adulatoribus similis occurit[15] dubitatio qui per detractationes et adulationes et scurrilia et effeminata uerba alliciunt fauorem magnatum, et adolescentes nobiles infatuant et sic pecunias emungunt, nonne tenentur ad restitutionem? Hos enim iubet deuitari apostolus in illo capitulo ad Tessalonicenses: *Denuntiamus uobis in nomine domini Jesu Christi ut abstineatis uos a quolibet fratre inordinate ambulante et cetera.*[16] Si ergo sacerdos in confessione tenetur omnibus iniungere ut omnia sic acquisita restituant, idem debet iniungi mangonibus siue cocionibus et sophysticis mercatoribus de hiis que dolose contra[17] iustum precium uendendo acquisierunt.

SOLUTIO istorum ex predictis iam quasi patet; ut tamen melius omnibus innotescat, ad primum respondemus sic. Cyrurgicus quicumque siue physicus non debet in periculosis potionibus nec incisionibus manum medicinalem[18] apponere nisi ubi credit se per uera et ualde probabilia argumenta eos posse curare et tunc si nichil omiserit de contingentibus dicemus eum debitam curam apposuisse. (fol. 15^{va}) Si autem aliter faciat propter[19] mercedem inductus, reus erit mortis si mors fuerit subsecuta. In incisione ergo facienda uel potione danda diligenter attendat in quam partem animus eius magis declinet[20] scilicet ut eum posset saluare[21] necne; et secundum[22] penitentis contricionem sacerdos penitentie medelam apponat et leuiter uel aspere puniat. Notandum autem quod longe magis puniendi sunt theologi et prelati qui occidunt in anima per indiscreta et perniciosa consilia quos aut symonie aut usure laqueis irretitos ut eis blandiantur non[23] absoluunt nec irretitos ostendunt. De aduocato dubie confitente idem dicimus; si uero confiteatur se propter insufficientiam [iustam][24] perdidisse causam, tenetur ad restitutionem in quantum potest. Similiter et alius qui per cauillationes et sophisticas allegationes iniuste acquisiuit aduerse partis hereditatem qui eam non contingebat, tenetur compellere clientem suum ad restitutionem. Et si ipse eum ad hoc inducere non potest ipsemet tenetur pro eo restituere in solidum. Ecce quam periculosum est causas iniustas defendere et [insufficientes][25] aduocatos causas procurare.[26] Eodem modo respondendum est de prelatis et principibus et [insufficientibus][27] tutoribus pupillorum. De lenonibus et turpitudinum procuratoribus dicimus quod tanquam rei omnium puniendi sunt. De adulatoribus distinguimus, nam si maturi et scioli permiserunt se a talibus infatuari sibi imputentur et illis non debet fieri restitutio eorum que adulatores ab eis adulatorie emunxerunt sed per manus sacerdotis in pias causas potius expendantur. Si uero adolescentes uel simplices fuerunt quos infatuauerunt adulatores tunc ista tenentur restituere omnia adolescentibus. Sicut accidit de meretrice que si infatuat simplicem et indiscretum et impubem tenetur ei ad restitutionem[28] quia ut dicit Augustinus: Meretrix peccat non quia accipit sed quia meretrix est.[29]

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[13] illectus T.

[14] Peter Cantor, *De sacramentis* I, 79; Troyes 276, fol. 66^{ra}: pari pena puniendi sunt facientes et consentientes. Cf. Ambrosiaster, *Comm. in Ep. ad Rom.* i, 31; PL 17, 66.

[15] disputatio uel *add.* T.

[16] II *Thess.* iii, 4.

[17] ultra T.

[18] medicabilem T.

[19] per T.

[20] inclinet T.

[21] sanare T.

[22] id et *add.* T.

[23] non *om.* T.

[24] iuste B.

[25] insufficienter B.

[26] et insufficientes . . . procurare *om.* T.

[27] insufficienter B.

De mangonibus et sophisticis mercatoribus dicimus quod omne illud quod dolose in contractu sophistice uenditionis acquisierunt ultra iustum ualorem rei uendite tenentur restituere ad (fol. 15^{vb}) arbitrium sacerdotis. Simile iudicium est de omnibus sediciosis et sophisticis defraudatoribus proximi uel aliquibus causis ad perniciem eum allicientibus, uelut de deciariis;[29a] de vestium incisoribus;[30] de iuuenculis se stibio et cerusa inficientibus ad irretiendos incautos; et de operariis qui preter omnem utilitatem proximi suam et proximorum operam impendunt in hiis que non sunt ad esculentum neque ad poculum[31] neque ad uestimentum neque ad aliam utilitatem sed potius ad iactantiam et lasciuiam excitandam.

[III DE MODO SATISFACTIONIS INIUNGENDE.]

[Caput XII.] Post predicta tractanda est questio illa que instituitur de modo satisfactionis iniungende. In primis ergo queritur utrum a sacerdote iniungenda sit penitentia simpliciter scilicet sine uoti aut sacramenti religione exhibita a confitente. Secundo queritur quid fiet si maiorem aut minorem iniungat penitentiam quam sanciant canones penitentiales. Tercio utrum sacerdos alienus possit alicui qui non de sua iurisdictione est iniungere aliquam penitentiam. Quarto utrum iste communes absolutiones siue[1] remissiones que indulgentur ab episcopis offerentibus pro fabrica ecclesiarum ualent eis et si ualent utrum per eas omnino possunt absolui a penitentia iniuncta pro tali oblatione.

[*a. Utrum sacerdos debeat iniungere penitentiam absolute.*]

Obiectio. De prima questione uidetur quod sacerdos non debet iniungere penitentiam absolute scilicet nisi penitens uoueat uel iuret se non recidiuaturum amodo in illa peccata que confitetur, quia penitentia subit loco baptismi, que est secunda tabula post naufragium.[2] Sed in baptismate requiritur illud uotum necessitatis: Abrenuntio sathane et pompis eius; eadem ratione in penitentia;[3] uel dicas quare non. Illud idem uidetur[4] per uotum Dauid de quo dicitur in psalmo illo: *Memento domine etc.*, *Sicut iurauit domino etc.*[5] Cum enim audiret peccatum suum translatum ab eo per Nathan prophetam,[5a] uouit se non recidiuaturum sed edificaturum domum domini. Eadem ratione cum quicumque alius confitetur sacerdoti, tenetur uouere se non recidiuaturum et sacerdos aliter non debet ei iniungere penitentiam. Si dicat quis quod uotum non debet facere sed promissionem sic: Promitto (fol. 16^{ra}) firmiter quod non recidiuabo, nonne tantum hic ualet firma promissio quantum religio uoti uel iuramenti? Veritas enim dictionis uel promissionis non est minor religione uoti uel iuramenti; ergo tantum obligatur quoad deum ex simplici promissione quantum ex uoto uel iuramento. Preterea confitens sic consueuit dicere: Peniteo de commissis et amodo non recidiuabo per auxilium dei; hoc est *al aie de deu.*[6] Quid sibi uult[6a] forma conditionis? Si enim is est sensus: non recidiuabo si deus me adiuuerit uel manum mihi superposuerit, quasi diceret: nisi dominus manum mihi superposuerit non potero me cohibere, sed quare ergo imputatur mihi si dominus [qui][7] superposuerit[8] manum retrahat.

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[28] que sic rapuit; si vero discretus et maturus quem infatuat, ille sibi imputet; non tenetur ei restituere *add.* T.

[29] Cf. *De fide et operibus* 17, PL 40, 219.

[29a] deciarius—a dice-maker; cf. Old French *deicier.*

[30] candatoribus T.

[31] poculentum T.

[1] absolutiones siue *om.* T.

[2] Cf. note 10, Cap. I.

[3] similiter debetur inquiri *add.* T.

[4] per se probari *add.* T.

[5] *Ps.* cxxxi, 2.

[5a] Cf. II *Reg.* xii. 13.

SOLUTIO. Exigere non debet sacerdos uotum a confitente nisi in casu, ut dicit canon[9] scilicet ubi confitetur heresim suam quia tunc sacerdos compellere debet penitentem ut abiuret eam. Unde si postmodum relabatur et conuincitur super hoc traditur curie puniendus, sicut dicit illud consilium Veronense: *ad abolendam*,[10] et quandoque ubi notorium est crimen eius sed aliter non. Et cum dicit penitens per gratiam dei non recidiuabo, firmiter debet proponere in animo quod non recidiuabit et si postmodum recidiuet sibi imputet quia mouet liberum arbitrium contra hoc quod prius promisit, cum in sua potestate esset motus liberi arbitrii. De promissione dicimus quod subintellegere debet penitens istam conditionem: Abstinebo amodo a peccatis quantum in me est si dominus per gratiam me adiuuet. Sed magis absolute et magis precise figitur res uoti in corde uouentis et ideo plus peccat transgressor emissi uoti quam transgressor talis promissionis. Quam cito enim emittitur uotum est in precepto iuxta illud: *Vouete et reddite*[11] id est si uoueris reddite.

[*b. De sacerdote qui minorem uel maiorem iniungat penitentiam.*]

Questio. Sequitur de secunda questione. Ecce aliquis sacerdos minorem iniungat satisfactionem penitenti quam exigat culpa eius uel canon penitentialis. Sed nullum malum est impunitum[12]; ergo cum hic non plene puniatur residuum illius penitentie supplebit in purgatorio; ergo pena quam iste sufferet[13] in purgatorio imputabitur sacerdoti quia si eum hic sufficienter puniret statim uolaret. Item sacerdos aliquis[14] (fol. 16^{rb}) quandoque maiorem infligit penitentiam quam exigit culpa penitentis. Hoc enim quandoque facit discretus sacerdos ad cautelam;[15] puta: uidet penitentem pronum ad peccandum et ideo frenum fortius ei imponit. Sed Augustinus dicit quod usura est cum plus sequitur in pena quam precessit in culpa,[16] ergo sacerdos talem penitentiam iniungens peccat.

Obiectio. Sed uidetur quod omnis sacerdos debeat potius subtrahere de pena iniungenda quam augmentare penitentias quia dicit auctoritas, quod emolliende sunt pene et non exasperande,[17] et misericordia superexaltat iudicium.[18] Et Gregorius dicit: Culpa est totam prosequi culpam.[19] Preterea melius est ut penitens suppleat in purgatorio quam in gehennali supplicio; ne ergo austeritate penitentie redeat ad uomitum potius est mollienda pena quam exasperanda.

SOLUTIO. Quod concedimus tamen omnis circumstancia penitentis diligenter est attenda, scilicet utrum sit lubricus uel delicatus, utrum spiritualibus nequitiis infectus quia semper contraria contrariis sunt curanda; quia dicit Ieronimus: Ieiunio sanantur pestes corporis oratione pestes mentis.[20] Dicimus ergo sicut solet dicere precentor[21] parisiensis quod sacerdos in confessione debet precidere omnes radices et actiones peccandi et tandem si uideat pronum et lubricum ad recidiuandum temperet et diminuat penam penitentie ne austeritate pene quasi desperando redeat in idipsum culpe et ita descendat in idipsum gehenne iuxta illud euangelii: *Nolite mittere uinum nouum in utres ueteres, alioquin rumpentur et uinum effundetur.*[22] Per uinum[23] intelligistis austeritatem penitentie per utres ueteres senes siue ualetudinarios et delicatos quibus leuiores penitentie sunt iniungende ne desperando recidiuent; et quod minus hic peragere possunt aut ieiunando aut carnem macerando, suppleant in purgatorio. Sed uinum nouum, id est austera penitentia, mittendum est in nouos utres scilicet in illos qui possunt fortius austeriora sufferre.

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[6] Old French: *a l'aïe de deu.*

[6a] hec *add.* T.

[7] qui *om.* B.

[8] si superposuerit *om.* T.

[9] Cf. *Decretum*, C. 1, q. 7, c. 9; *De cons.*, D. 2, c. 42.

[10] Under Lucius III in 1184: *Ad abolendam . . . obsequantur.* Jaffé 15109 (9635); *Compilatio* II^{a}, I, 6. 11; (c. 9, X, V, 7.)

[11] *Ps.* lxxv, 12.

[12] *Summa Sententiarum* II, 6, 11; PL 176, 148.

[13] sustinebit T.

[14] aliquis *om.* T.

[15] For the principle of penance *ad cautelam*, cf. Kuttner, *Kanonistische Schuldlehre*, pp. 108-109.

[16] Cf. *Enarr. in Ps. lxxi*, 14; PL 36, 910. Peter Cantor, *Verbum Abbrev.* c. 70; PL 205, 156.

[17] *Decretum, De poen.*, D. 1, c. 18.

[18] *Jac.* ii, 13.

[19] Cf. Peter Cantor, *Verbum Abbrev.* c. 100; PL 205, 283.

[20] Ps. Jerome, *Expos. in Marcum* 9; PL 30, 638.

[c. *Utrum sacerdos alienus possit alicui iniungere penitentiam.*]

Sequitur de tercia questione. De qua sic. Sacerdos alienus qui non habet super te iurisdictionem non potest te ligare quia *nemo mittit falcem et cetera*,[24] ergo nec absoluere nisi de speciali mandato maioris. Si hoc, (fol. 16^{va}) ergo nec penitentiam iniungere, ergo si accedas ad conscolarem uel ad religiosum abbatem uel quemcumque alium qui non est tuus sacerdos proprius non potest[25] tibi iniungere penitentiam nec commutare illam quam tibi iniunxit proprius; ergo nichil est quod dicunt isti questuarii[26] sacerdotes: Indulgemus uobis omnibus qui interfuistis solemnitati misse[27] ut propter diem festum bis comedatis et quecumque uobis apponentur; quia nichil ad talem sacerdotem de me uel de te quia non sum de suo foro.

SOLUTIO. Tria sunt distinguenda scilicet quibus conueniat consulere, quibus penitentiam indicere, quibus penitentiam iniungere. Omnibus cuiuscumque conditionis si scioli sunt conuenit consulere ut scilicet dent consilium si sciant proximo de declinatione et perplexitate uiciorum. Morientibus siquidem est indicenda penitentia non iniungenda et nichil aliud est penitentiam indicere quam penam taxatam secundum quantitatem et qualitatem criminum et sancita patrum[28] penitenti ostendere et hoc conuenit cuilibet discreto ut hoc circa sibi subditos uel quoscumque alios exhibeat. Penitentiam iniungere nichil aliud est quam penam condignam imponere penitenti quod conuenit proprio tantum sacerdoti qui non alieno subdito sed suis tantum satisfactionem penitentialem habet iniungere. Itaque sicut inter hec tria distinximus: consulere, indicere, iniungere in foro penitentiali ita circa doctrinam distinguimus inter hec tria: dicere, docere, predicare. Primum scilicet dicere sive annuntiare bonum omnibus conuenit; secundum tantum doctoribus et litteratis; tercium tantum illis qui missi sunt dummodo habeant intelligentiam scripturarum.[29] Dicimus ergo quod duo premissa, scilicet dare consilium et penitentiam indicere, conueniunt cuilibet alieno sacerdoti, sed tercium non nisi habeat illud per speciale mandatum superioris ut episcopi loci uel legati uel domini pape.[30] Unde claustrales sancti Victoris non haberent hoc nisi de mandatis episcopi parisiensis. Unde nec ipsi nec aliqui alii sine mandato domini episcopi possunt se ad hoc intrudere.

De sacerdote questuario[31] qui propter festiuum diem predicto modo dat licentiam bis comedendi dicimus quod sic nichil indulget illi qui uotum uouit, nec alieno (fol. 16^{vb}) parrochyano quia nec etiam potest commutare ieiunium illius uel redimere per refectionem pauperum quia alienus parrochyanus suo domino scilicet suo sacerdoti stat et cadit teste apostolo.[32] Tamen proprius sacerdos ipsius non debet absolute iniungere sic: Iniungo tibi ut quicquid contingat taliter ieiunes; semper debet adiungi talis exceptio: Iniungo tibi ut ista facias nisi rationabilis causa te impediat et quando hoc interueniet transfer ieiunium ad alium diem, uel pro ieiunio refice tot pauperes, uel tot decantes psalmos uel aliquid tale. Poterit contingere ex ieiunio tuo maximum scandalum ut si in aliqua magna curia sis uel inter tales qui statim dicent te catharum uel ypocritam uel papalardum si inter eos ieiunes et ideo crede euangelio ubi dicitur: *Ve illi per quem scandalum oritur, expedit enim ut mola asinaria suspendatur in collum eius et demergatur in profundum maris;*[33] unde apostolus: *Si esca mea scandalizat fratrem meum non manducabo in eternum.*[34]

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[21] Cantor T. We do not find this opinion in the *De sacramentis*.

[22] Cf. *Matt.* ix, 17; *Marc.* ii, 22; *Luc.* v, 37.

[23] nouum *add.* T.

[24] Cf. *Deut.* xxiii, 25.

[25] ille *add.* T.

[26] questuarii *om.* T.

[27] misse *om.* T.

[28] Cf. *Sent.* IV, 16, 3; Quaracchi II, 842. *Decretum*, *De poen.*, D. 5, c. 6.

[29] Cf. *Decretum*, D. 38, c. 1, c. 9.

[30] Cf. Bernold of Constance, *De presbyteris* 9; MHG *Libelli de lite* II, pp. 145-146.

[31] questuario *om.* T.

[Caput XIII. *d. De generalibus absolutionibus que fiunt per papam et episcopos.*]

Questio. Sequitur quarta questio qua queritur utrum generales iste absolutiones siue remissiones que fiunt per dominum papam et episcopos uigorem habeant; quod uidetur posse ostendi quatuor rationibus. Prima est quia dominus papa uocatus est in[1] plenitudinem potestatis, alii[2] in curam et sollicitudinem;[3] et si hoc, ergo habet potestatem plenam[4] soluendi et ligandi sicut Petrus cui et omnibus successoribus eius collate sunt claues ibi: *Quodcumque ligaueris et cetera.*[5]

Obiectio. Item Aaron in ueteri lege habuit generale officium eiciendi omnes leprosos a castris uel ibi retinendos.[6] Si enim candens erat lepra et manifesta eiciebat eum a castris; si uero subobscura et non adeo manifesta, recludebat eum septem diebus quousque cognosceret de lepra utrum esset uera necne. Sic ergo ipse poterat in quibuscumque dispensare per aliquantum tempus et quosdam statim expellere. Sed dominus papa succedit in plenitudinem potestatis eius,[6a] ergo ipse similiter potest[7] expellere ligando et cum aliis dispensare eos absoluendo.

Obiectio. Item super locum illum euangelii: ubi quatuor uiri submiserunt paralyticum per tegulas domus ante dominum, cui dixit dominus: *Confide fili remittuntur tibi peccata tua;*[8] ibi dicit (fol. 17^{ra}) Augustinus: Vide quantum ualet fides propria cum tantum ualeant merita aliena.[9] Ibi enim per fidem alienam recuperauit ille gratiam et curam corporis et sic est absolutus a pena et culpa per alios; multo fortius per dominum papam et suffragia ecclesie generalis absoluitur aliquis a pena penitentie.[10] Suffragia ecclesie ad hoc prosunt ut aut plena sit remissio aut tolerabilior damnatio.[11] Sed auctoritate domini pape pro isto fiunt suffragia generalis ecclesie ergo per illa tolerabilior fit damnatio scilicet pene aut plena fit remissio penitentie.

Obiectio. Sed contra: tu dicis quod hec suffragia et huiusmodo remissiones ualent tibi. Esto quod triennem susceperis penitentiam et accedas ad tres ecclesias in quibus fiunt generales remissiones sub forma quam proponunt, scilicet: quicumque accedat et offeret ad fabricam huius ecclesie remittatur ei tercia pars penitentie sue et omnia uenialia et peccata oblita. Isti pro hac oblatione remittitur tercia pars penitentie. Iterum idem offert in alia ecclesia et remittitur tercia pars et in tercia iterum tercia; ergo plene absoluitur ab hac trienni penitentia per has tres oblationes.

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[32] Cf. *Rom.* xiv, 4.

[33] *Matt.* xviii, 7.

[34] I *Cor.* viii, 13.

[1] uocatus est in—habet T.

[2] uocati sunt *add.* T.

[3] in curam et sollicitudinem—in partem sollicitudinis T.

[4] plenam *om.* T.

[5] *Matt.* xvi, 19.

[6] Cf. *Lev.* xiii, 2.

[6a] Cf. Peter of Poitiers, *Sent.* III, 2; PL 211, 1046.

[7] hos *add.* T.

[8] *Matt.* ix, 2.

[9] Cf. Bede, *In Evang. Marci* 1, 2; PL 92, 147; Peter of Poitiers, *Sent.* V, 20; PL 211, 1269.

[10] Item Augustinus *add.* T.

[11] Cf. Peter of Poitiers, *Sent.* V, 20; PL 211, 1269.

Obiectio. Forte dicet[12] quod non remittitur tanta[13] pars penitentie. Sed contra: aliqua pars alicubi sic remittitur, sit illa millesima aut centesima, et esto quod[14] mille uel centem sint[15] sacerdotes et mille uel centum sint partes; sic ergo totus absolutus est.

Obiectio. Sed contra: aut deus punit aut homo.[16] Sed nec deus punit istum nec homo pro peccatis commissis, quomodo ergo absoluitur iste cum nullum malum sit impunitum.[17]

Obiectio. Item iste absoluitur per tales remissiones quia offert; pauper non offert et ideo ei nichil remittitur; ergo uidetur quod potior hic sit conditio diuitis quam pauperis. Sed contrarium habetur super istum psalmum: *In conuertendo dominus etc.*[18] ubi dicit Augustinus quod cum quatuor accedant in pari caritate ut Zacheus, mulier euangelica, et pauper non habens nisi calicem aque frigide et alius qui nichil habet nisi solam uoluntatem, dicit quod nullus istorum plus meretur alio.[19] Unde ultimus tantum offert quantum primus quia ut idem dicit: *Ubi deest facultas sufficit uoluntas.*[20]

SOLUTIO. (fol. 17^{rb}) Dicimus quod predicte absolutiones ualent per suffragia ecclesie ad tria scilicet ad pene diminutionem et ad gratie impetrationem et ad uenialium deletionem; tanta enim est gratia in suffragiis et deuotione ecclesie quod per illa remittitur de pena penitentie et per illam infunditur prima gratia, quia licet nullus sibi posset mereri primam gratiam, tamen aliquis potest illam alii mereri.[21] Similiter uenialia tolluntur per cotidianas orationes et aspersionem aque benedicte et per sumptionem eucharistie.[22] Et quod [per][23] orationes fidelium fiant hec patet per infinita exempla. Nam per orationes Danielis solutus est populus Israel a captiuitate[24] et per orationem Moysi remisit dominus iram populi Israel.[25] Similiter ad orationem Dauid amouit dominus plagam a populo suo[26] et ad orationem Ananie squame ceciderunt ab oculis Pauli[27] et per suffragia ecclesie *que sine intermissione fiebant pro Petro, ceciderunt catene de manibus eius,*[28] quia teste Iacobo: *Multum ualet oratio iusti assidua.*[29]

Questio. Si autem queratur quantum de pena remittitur isti per tales oblationes dicimus cum Cantore quod nec etiam angelus de celo nec aliquis homo mortalis nisi ei fuit inspiratum poterit hanc questionem soluere;[29a] quod per hoc[30] patet unicuique intelligenti quod maioritas aut minoritas remissionis penitentie attenditur secundum tria, scilicet quantitatem deuotionis eius qui accedit et secundum minorem aut maiorem deuotionem suffragantium et secundum pluralitatem aut paucitatem illorum qui suffragantur; quia offerens tripliciter accedere potest scilicet uel tantum aridus et sic nichil meretur, uel aliquantum deuotus et sic aliquid meretur, uel magis deuotus et sic plus meretur; quando deuotissime tunc satis plus meretur, quando omnes ecclesie simul orant pro eo tunc adhuc plus meretur. Si ergo omnia ista concurrunt tunc plus de penitentia remittitur offerenti. Si uero minima aut nulla est omnium deuotio tunc parum aut nichil remittitur de pena.[31] Cum ergo nullus mortalis sciat quantum sit deuotio suffragantium et quam efficax aut quanta sit deuotio offerentis, constat quod ipse nescit[32] quantum de pena remittatur ei per tales absolutiones.[33]

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[12] aliquis *add.* T.

[13] tota T.

[14] accedat ad *add.* T.

[15] sint *om.* T.

[16] *Summa Sententiarum* II, 6, 11; PL 176, 148. Cf. *Decretum, De poen.*, D. 1, c. 82.

[17] *Summa Sent. ibid.*

[18] *Ps.* cxxv, 1.

[19] *Enarr. in Ps. lviii*, 1, 13; PL 37, 1064-1065.

[20] Cf. *Decretum, De poen.*, D. 1, c. 30; Augustine, *De libero arbitrio* 1, 3, 8. Peter Cantor, *De sacramentis* I, 57; *Troyes* fol. 34^{va}: Voluntas pro facto reputatur.

[21] Cf. Augustine, *De dono persev.* 21, 56; PL 45, 1028.

[22] Cf. note 9 Cap. VIII.

[23] per *om.* T.

[24] Cf. Peter Manducator, *Historia Scholastica Libri Danielis* 9; PL 198, 1462.

[25] *Ex.* xxxii, 7-14.

[26] II *Reg.* xxiv, 15-25.

[27] *Acta* ix, 18.

[28] *Acta* xii, 5.

[29] *Jac.* v, 16.

[29a] Peter Cantor deals with this problem in his *De sacramentis* (*Troyes* 276, fol. 55^{va}) but does not give this answer. On this problem, cf. N. Paulus, *Geschichte des Ablasses im Mittelalter* I (Paderborn, 1922), pp. 212 ff.

[30] per hoc *om.* T.

Obiectio. Sed obicitur: nonne (fol. 17va) ad tres ecclesias potest pari deuotione offerre ut fiat ei remissio proportionalis scilicet ut a tribus tres anni penitentie remittantur uel a centum episcopis [centum][34] dies penitentie et non[35] plures partes penitentie sunt istius, ergo plene absolui potest a tot ecclesiis;[36] hoc enim potest contingere. Sed nos non possumus quando hoc contingat certi esse nisi nobis fuerit reuelatum celitus. Quid ergo dicet sacerdos illi cui reuera dimissa est tota penitentia in hunc modum?

SOLUTIO. Dicimus quod sacerdos non debet ei consulere ut cesset a ieiunio sibi iniuncto, immo ad cautelam debet ei inungere ut ita sicut ei iniunctum est impleat quia quicumque casus accidat ei ualebit uel ad remissionem peccatorum uel ad augmentum corone. Ideo autem institute sunt tales remissiones quia ieiunia et peregrinationes[37] solent sepe homines perficere in mortali peccato aut semiplene et ideo quasi ad cautelam et robur sunt institute tales remissiones in ecclesia; et quando episcopus instituit eas non debuit[38] eas sub hac forma instituere: Nos absoluimus accedentes ad locum istum si offerant. Sed sic: Nos absoluimus sic accedentes si possunt offerre et offerant deuote, uel si non possunt et deuote accedant absoluimus; cum deus non pensat factum sed affectum;[39] et ita in nullo frustratur pauper quantum ad hoc si deuotus accedat uel si pro eo deuote suffragetur ecclesia.

Obiectio. Sed hiis obicitur sic: Esto quod facta tali remissione et ipse episcopus et totum capitulum et omnes ecclesie suffragantes sint in mortali peccato; si hoc est, constat quod non ualent suffragia eorum quia *peccatores non exaudit deus,*[40] immo *oratio eorum fiat eis in peccatum*[41] nam omnia opera eorum mortua sunt, ergo nichil ualent isti offerenti quia idem est de illis ac si aliquis institueret in ecclesia centum statuas recipientes spiritum immundum quo flatiles emitterent oratones pro sic offerente, ergo sicut nec tales orationes possunt alicui ualere nec suffragia in predicta ecclesia existentium in mortali ei ualent. *Causa* iii, *questione* vii: *In grauibus.*[42] Dicit enim Gregorius: Cum is qui displicet ad intercedendum mittitur irati animus proculdubio ad deteriora prouocatur;[43] et idem ait: Qui suis premitur aliena non diluit.[44] (fol. 17^{vb}) Et iterum: Qui non ardet non accendit.[45]

SOLUTIO. Tria sunt diligenter hic annotanda que immobilia sunt, que[46] in presenti ecclesia inuariabilem sui retinent efficaciam: uirtus uerborum, uirtus sacramentorum, desiderium ecclesie; quia quamuis tota ecclesia presens esset in mortali peccato tamen ista ualent hiis pro quibus suffragatur, scilicet uirtus uerborum sicut quidam psalmi qui specialem habent uirtutem a quocumque decantentur, ut uersus ille: *Dirupisti uincula mea tibi etc.*[47] Similiter uirtus sacramenti eucharistie[48] a quocumque offeratur ualet illis pro quibus offertur si deuote assint. Similiter desiderium ecclesie militantis[49] ualet illis quia ecclesie generalis una pars militat in terris, alia triumphat in celis et pro illis insimul dicitur in ecclesia *oremus* pluraliter; sic ergo non potest totalis ecclesia esse quin aliquis habeat suffragantes pro predictis offerentibus. Sed circumscriptis predictis tribus, alia que fiunt in ecclesia ab hiis qui sunt in peccato mortali non ualent sibi nec aliis. Unde ille qui surrexit .xl. annis ad matutinas, existens semper in mortali, nec sibi nec alicui meruit quia orationes eius fuerunt ei in peccatum et propter hoc dicit Gregorius:[50] Facile deuiat a iusticia qui non habet deum sed nummum semper[51] in causa;[52] quia non [surrexerit][53] propter lucrum animarum sed propter miserum questum quia animas pro quibus tanto tempore bona[54] suscepit per omnia defraudauit quia nichil eis profuit sed sine omni merito bona illarum deuoraut et ideo in extrema uentilatione censemus quod ipse tenetur ad omnium restitutionem.

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[31] penitentia T.

[32] ipse nescit—nemo scit T.

[33] oblationes uel absolutiones T.

[34] centum *om.* B.

[35] ut T.

[36] epscopis T.

[37] et similia *add.* T.

[38] debet T.

[39] Cf. note 27, Cap. I.

[40] II *Reg.* xxii, 42.

[41] *Ps.* cviii, 7.

[42] *Decretum,* C. 3, q. 7, c. 5.

[43] *Moralia, praef.* c. 3; PL 75, 521.

[44] *Ibidem.*

[45] Cf. Augustine, *Enarr. in Ps. ciii,* 4; PL 37, 1353.

[46] quia T; quicquid accidit *add.* T.

[47] *Ps.* cxv, 16.

[Caput XIV. *e. Utrum questuarii sint audiendi.*]

Questio. Sed queritur utrum isti pseudo communes questuarii deferentes cedulas huiusmodi relaxationum sint audiendi. Videtur quod non, quia communiter predicant sub hac forma: Quicumque obtulerit fabrice illius ecclesie nummum, quocumque modo accedat, particeps erit relaxationis. Preterea dicunt quod si anima alicuius est in inferno per tales oblationes redimi potest, uel aliqua pars pene eius tolli. Sed hec omnia heresim sapiunt quia ab inferno nulla est redemptio[1] nec alicuius pene (fol. 18^{ra}) diminutio quia si una pars pene sue ab aliquo posset tolli eadem ratione et alia et ita tota posset deleri, quod est impossible.

SOLUTIO. Distinguendum est quia predicantes tales relaxationes aut admiscent heresim et falsitatem aut simpliciter annuntiant ueritatem. Si heresim interserant propter questum ut diximus fures sunt et latrones et non sunt audiendi sed recidendi ab ecclesia quia sunt caupones miscentes aquam uino[2] et ueniunt ad nos *in uestimentis ouium, intrinsecus autem sunt lupi rapaces.*[3] Unde Augustinus sic distinguens ait: Quidam in ecclesia sunt pastores et sunt imitandi: quidam mercenarii et ad horam tolerandi; quidam fures et ipsi sunt expellendi.[4] Si uero simplices sunt et non adulterantes uerbum dei et talia edicta referunt relaxationum ad nos tolerari possunt.

[*f. Utrum prelatus debeat refundere in fabricam ecclesie que sic collecta sint.*]

Questio. Item de eisdem similis oritur questio utrum prelatus qui mittit tales debeat refundere in fabricam ecclesie ea que sic per adulterinas predicationes collegerint pseudo passim ab omnibus siue[5] raptoribus siue non, et utrum prelatus cum non habeat litteratos quos mittat sed tales fallaces caupones debeat eis committere edictum talium relaxationum ut occasione talis edicti per mendatia que interserunt colligant miseras stipes et uiles feneratorum oblationes ad edificandam ecclesiam.

Obiectio. Videtur quod non debeat hoc aliquatenus pati neque illis in talibus auctoritatem prestare quia ille facit cuius auctoritate res sit, et dicit auctoritas: *Non offeres precium canis uel scorti super altare meum;*[6] et qui offert de rapina idem est ac *si mactet filium in conspectu patris.*[7] Cum ergo sciat predictos offerentes de rapina potius sibi obesse quam prodesse in aliquo non debet eis prestare hoc incentiuum delinquendi.

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[48] quia *add.* T.
[49] generalis T.
[50] Locus non reperitur.
[51] sed nummum semper *om.* T.
[52] sed iste habuit nummum in causa *add.* T.
[53] surrexerunt B.
[54] bona *om.* T.

[1] Richard of St. Victor, *De differentia peccati mort. et ven.*; PL 196, 1192.
[2] Cf. *Is.* i, 22; Peter Cantor, *Verbum Abbrev.* c. 2; PL 205, 27.
[3] *Matt.* vii, 15.
[4] Cf. *Sermo* 137, 5; PL 38, 757.
[5] siue *om.* T.
[6] Cf. *Deut.* xxiii, 18; *Prov.* vi, 26.

SOLUTIO. Quod concedimus. Unde si mittat aliquos tales debet in cedula relaxationis scribere et sub pena excommunicationis interdicere ne raptores aut feneratores offerant aliquid ad fabricam ecclesie sue de rapina cum hoc cederet potius ad confusionem quam ad penitentie relaxationem. Nec debet scienter ad hoc caupones mittere sed simplices laicos[8] et timoratos et interdicere debet eis ne predicent nisi (fol. 18^{rb}) habeant intelligentiam scripturarum et ne seminent hereses in ecclesia.

[*g. Utrum simplex sacerdos debeat tales recipere.*]

Questio. Sed queritur quid faciet deuotus et simplex sacerdos gerens curam ouium suarum cum uidet furtiferum talem transmissum ei a suo episcopo uel metropolitano deferentem cedulam continentem relaxationes et interserentem hereses et mendatia, ut supra tetigimus, ut sibi quocumque modo quascumque oblationes sibi acquirat. Si recipit talem, scit pro certo quod tota eius plebecula confundetur per scandala que ipse seminabit. Si repellat eum statim insurgunt ruralis decanus et episcopus in eum seuientes et minas[9] excommunicationis pretendentes ut eum emungant et a parrochia expellant.

SOLUTIO. Hic non est nisi unicum consilium salubre ut cum sacerdos sciat talem esse cauponem et pernitiosum plebi sue nullatenus recipiat sicut nec furem aut latronem; iuxta illud euangelicum: *Attendite a falsis prophetis etc.*[10] Et iterum: si aliquid precipiat consul et aliud proconsul precepto consulis est obediendum.[11] Permittet ergo potius se excommunicari et expelli a sua parrochia quam tantum scandalum et tantam gregis sui iacturam patiatur.

[*f. De commutationibus penitentiarum.*]

Item non solum huiusmodi relaxationes fieri possunt in ecclesia[12] a prelatis sed etiam commutationes penitentiarum cognita causa. Verbi gratia: Ecce aliquis qui suscipit in penitentiam a sacerdote iter longe peregrinationis, interim factus est ualetudinarius uel claudus ita quod non potest peragere peregrinationem illam. Sacerdos eius cognoscens de[13] hoc in foro[14] potest commutare penam illam in aliam penam scilicet in pias elemosinas, orationes et carnis macerationes, ut que expenderet in peregrinatione refundat in pauperes ad arbitrium sacerdotis uel in fabricam ecclesie et huiusmodi. Similiter accidit de illo qui per diutinas lucubrationes in studio adeo debilis effectus est et a cerebro euacuatus quod ieiunare non potest sicut ei est iniunctum. Sacerdos eius hoc attendens digne potest commutare hanc pententiam in aliam equipollentem secundum quod uideret expedire.

Questio. Sed hic duplex oritur questio. Una ortum habet de sacerdotum adulatione. alia ex eorum cupiditate; quia duabus hiis causis procurantibus capellani principum et alii sacerdotes *ad excusandas excusationes* (fol. 18va) *in peccatis*[15] sine cause cognitione in pernitiem principum adulantes et eis et aliis maioribus dicunt: talis pena uobis grauis est in ieiuniis, in uigiliis, sed si placet uobis ego commutabo eam, quia nimis grauis est,[16] in pabulum pauperum uel missarum decantationem et ego super me honus uestrum assumo et uos a pena uobis iniuncta absoluo; et tamen frenum illud ieiunii et carnis macerationis necessarium fuit illi contra lubricum carnis[17] eo quod lubricus fuit et iuuenis; iste dat ei incentiuum discurrendi per campos licentie ut sic aliquid commodi uel dignitatis alicuius ab eo uenetur. Videtur quod nichil agat sacerdos, immo quod fit ad utriusque pernitiem nam[18] hec mutatio penitentie cedit in confusionem utriusque; unde[19] penitens adhuc remanet obnoxius priori pene.

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[7] *Eccli.* xxxiv, 24.

[8] laicos *om.* T.

[9] penas T.

[10] *Matt.* vii, 15.

[11] Cf. Augustine, *Sermo* 61, 8, 13; PL 38, 421. Peter Cantor, *De sacramentis* I, 88; *Troyes* 276, fol. 80va: Si iubeat proconsul et prohibeat consul, parendum est consuli.

[12] in ecclesia *om.* T.

[13] de *om.* T.

[14] penitentiali *add.* T.

[15] *Ps.* cxl, 4.

[Caput XV. *g. De ruralibus sacerdotibus penitentias propter questum iniungentibus.*]

Item de facto accidit tota die[1] quod propter questum rurales sacerdotes ineunt fedus mortis instituentes[2] ut si aliquis penitens ad eos uenerit[3] nichil iniungant ei quod pertineat ad carnis macerationem, sed potius ea in quibus lucrentur dicentes cuilibet: Vade ad illum sacerdotem pro commissis tuis; commuta omnem penam tibi iniunctam in missarum celebrationem et fac celebrare tricenaria uel centenaria missarum et da quod ipse exigerit a te secundum consuetudinem ecclesiarum;[4] et sic sine cause cognitione commutant, immo peruertunt penitentiam. Et quod grauius est religiose domus, pernitiosius seuiunt in foro penitentiali quia in illis maior uidetur auctoritas consilii et salutis; hii enim persuadent raptoribus et principibus ad eos confluentbus[5] ut in domibus suis noua fabricent altaria, monachos conducticios aut alios mercenarios instituant sacerdotes; et omnes pententias sibi iniunctas [dimittunt][6] propter suffragia talia. Inducunt etiam tales ut intuitu talium missarum[7] conferant ecclesiis suis de bonis suis uel etiam de rapinis uel quibuscumque illicite acquisitis non habentes distinctionem inter mundum et immundum; et hec et hiis similia confirmant[8] episcopi, approbant metropolitani, tacente et non resistente domino papa.

Questio. Hic ergo oritur questio utrum simplices,[9] qui non ex affectata uel crassa (fol. 18^{vb}) ignorantia ignorant quid sit iuris in hiis,[10] meritorie ista faciant. Quod uidetur quia ipsi[11] tenentur credere maioribus precipue in hiis que uidentur eis ad salutem[12] animarum ut largitionibus elemosinarum et suffragiis[13] missarum.

Obiectio. Sed contra iam notum est lippis et tonsoribus[13a] et uulgus clamat in publicis[14] quia hec omnia tendunt ad questum non ad lucrum animarum. Quia quod turpius est iam clamitat populus ad confusionem cleri [uendentis][15] omnia sacramenta, missas, prebendas, cathedras et huiusmodi quod christianitatem suam gerant in marsupio suo;[16] quia quando dat statim absoluitur uel ab excommunicatione uel ab aliis; si non dat, statim calumniose accusatur, excommunicatur aut ei nuptie aut sacramenta interdicuntur; cum ergo omnibus pateat, aut de facili possit liquere, predicta non fieri ad salutem animarum sed ad earum confusionem, non sunt audiendi sacerdotes in predictis commutationibus.

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[16] quia nimis gravis est *om.* T.

[17] contra lubricum carnis *om.* T.

[18] immo quod — nam *om.* T.

[19] unde . . . pene *om.* T.

[1] tota die *om.* T.

[2] ineunt . . . instituentes—ineuntes . . . instituunt T.

[3] ut . . . uenerit—quod quandocumque penitentes accedunt ad eos T.

[4] lucrentur dicentes . . . ecclesiarum—lucrentur utpote missarum celebrationem scilicet ut faciant celebrari penitentes tricenalia, annualia T.

[5] ad eos confluentibus *om.* T.

[6] dimittit T.

[7] intuitu talium missarum—talis instituta missarum et suffragia talium T.

[8] instituunt T.

[9] laici *add.* T.

[10] in hiis *om.* T.

[11] minores T.

[12] ad salutem—de consilio T.

[13] celebrationibus T.

[13a] Horace, *Sat.* I, 7, 3.

[14] plateis T.

[15] uidentis B.

[16] in marsupio suo—in bursis suis T.

SOLUTIO. Tria sunt hic que faciunt ad horum solutionem que penitus eradicanda sunt tanquam putride et infecte radices. Primum est adulatio, secundum cupiditas, tercium pactio. Hec enim sunt tres radices symonie et ideo sacerdos hiis tribus radicibus nitens est Symon magus cui dicendum est cum Petro: Pecunia, quam in hiis venaris, tecum sit in tuam perditionem.[17] Omnes igitur huiusmodi questuarii sacerdotes qui uel per adulationem predicto modo commutant predictas[18] penitentias uel per cupiditatem uel per iniustam pactionem, cum hoc faciunt in pernitiem animarum, non sunt audiendi quia in hiis faciunt quod est contra bonos mores. Unde etiam nec dominus papa potest dispensare contra fidem uel bonos mores.[18a] Cesset ergo secundum Gregorium[19] omnis pactio uel[20] conuentio missarum quia nec emi et uendi possunt. Potest tamen penitens uel alius supplicare capellano uel alicui[21] ut memoriam sui habeat in triginta[22] missis uel centum.[23] Sed non debet eum inducere ad hoc ut celebret quia forte sacerdos est in mortali peccato, et precipue istis qui qualibet die conficiunt. Unde miror unde oculis nostrorum questuariorum tantus suffecerit humor aut tanta deuotio aut puritas conscientie ut se intrudant ad hoc ut ita[24] singulis diebus audeant celebrare cum uix (fol. 19^{ra}) dignissimus digne aliquando ad tantum accedat sacramentum.

[*h. Utrum prelatus debeat permittere questuarios deferre reliquias sanctorum.*]

Questio. Item queritur si prelatus debeat permittere predictos predicantes propter questum et tot abhominationes interserentes deferre capsulas et philacteria[25] et reliquias sanctorum cum predictis cedulis ad colligendas oblationes passim pro fabricatione ecclesie. Videtur quod nullomodo hoc pati debeat quia nichil aliud est talia instrumenta conferre predictis furciferis quam committere gladios furiosis. Preterea hoc indecorum est et contra auctoritatem et honestatem sanctorum ut episcopus faciat illos mendicare mortuos et post mortem ea acquirere[26] que in uita tanquam stercora contempsere. Sicut patet manifeste per sanctum Gendulfum[27] quia cum corpus eius mortuum collatum esset[28] in capsula argentea statim rupit capsulam illam[29] ut sic doceret mortuis argentum contemnendum[30] quod ipse contempsit uiuus. Hoc quidem [testatus][31] est beatus Firminus ambianensis quia cum questores uellent corpus eius a loco martyrii ad sic mendicandum deferre statim factum est immobile[32] nec ab aliquibus poterat a loco suo asportari. Sic ergo patet quod reliquie sanctorum non sunt exponende ad mentiendum uel mendicandum uel ad deum per miracula temptandum; iuxta illud: *Non temptabis dominum deum tuum*[33] nec in questu meretricum sedeant uel uenum tradantur.[34]

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[17] Cf. *Acta* viii, 20.

[18] predictas *om.* T.

[18a] On the views of the decretists on this point, cf. J. Brys, *De Dispensatione in Iure Canonico*, pp. 137 ff.

[19] Locus non reperitur. For a similar view, cf. Abelard, *Scito te ipsum* 18; PL 178, 663.

[20] cesset T.

[21] capellano uel alicui—sacerdoti devote T.

[22] triginta *om.* T.

[23] uel centum *om.* T.

[24] se intrudant . . . ita *om.* T.

[25] et philacteria *om.* T.

[26] querere T.

[27] St. Gendulfus, bishop and martyr Nov. 13; cf. Missal of Paris, 13th century; Leroquais, *Les sacramentaires* II, p. 50. Some late manuscripts of the martyrology of Usuard (PL 124, 689-690) give: Parisius s. Gendulfi episcopi. Gams in his *Series Episcoporum* gives no such name for Paris.

[28] parisius *add.* T.

[29] capsulam illam—eam similiter et auream tandem in lignea requieuit T.

[30] et aurum *add.* T.

[31] temptatus B. For St. Firminus of Amiens, cf. *Acta SS. Sept.* I, pp. 175 ff.

[32] statim . . . immobile *om.* T.

[33] *Deut.* vi, 16.

[34] nec in . . . tradantur *om.* T. The views expressed here by Courson are similar to the legislation of the Fourth Lateran Council, c. 62; cf. c. 2, X, III, 45.

[*i. Utrum restitutio possit commutari in aliam penam.*]

Questio. Post hec queritur utrum in aliquo casu sacerdos possit commutare in foro penitentiali restitutionem faciendam a penitente in aliam penam; puta: iste multa rapuit, ualetudinarius effectus est paucula habet de rapina, possuntne illa concedi ei ab ecclesia cum non habeat unde uiuat ut in ieiuniis et orationibus suffragetur spoliatis? Preterea ecce aliquis qui non habet quod restituat et tamen multa rapuit, sacerdos eius uel dominus papa imprimit ei crucem pro omnibus peccatis commissis et pro raptis omnibus.

Obiectio. Sed contra. Si hic maneret, posset aliquid acquirere ad restitutionem faciendam. Queritur ergo si hec peregrinatio possit redimere hanc restitutionem ad quam ipse tenetur. Videtur quod non; nam ex ore saluatoris habemus contrarium in Leuitico, ubi ait dominus: *si aliqua macula lepre in tegmine uel in subtegmine uel in pelle fuerit alba* (fol. 19^{rb}) *uel rufa;*[35] alba dicit glosa per uanam gloriam, rufa per [rapinam];[36] *si creverit abicietur leprosus de castris, si uero steterit lepra, locus eius abrumpetur et abscidetur a solido per sacerdotes;*[37] lepra stans dicitur esse in feneratore et raptore quando cessat a rapina uel usura. Sed non restituit ablata, igitur locus eius abscidetur a solido id est a soliditate ecclesie nisi restituat ablata, ergo cum nullus possit dispensare contra domini mandatum[37a] nec papa nec alius potest commutare restitutionem aliquam faciendam uel in penam peregrinationis uel in aliam.

Obiectio. Item ut dicit auctoritas:[38] *lepra in stamine* est lepra in intentione, *lepra in subtegmine* est lepra in operatione, *lepra in pelle* est lepra in carnis maceratione scilicet quando homo pro ieiunio uel continentia gloriatur. Igitur discretus sacerdos debet omnia ista precidere a penitente, ergo non debet penitentiam pro penitentia commutare ergo non debet alicui pro restitutione facienda iter peregrinationis Iherosolimitane iniungere ex quo de strenuitate milicie[39] glorietur uel aliquam maculam lepre incurrat quia dicit dominus in Leuitico: *Vestimentum et omne illud in quo [inuenta]*[40] *fuerit lepra pollutum; iudicet sacerdos et flammis comburetur.*[41]

Obiectio. Item predictos milites uel principes crucem assumentes non compellunt sacerdotes maiores uel minores ad restitutionem decimarum, talliarum, et exactionum nec conhabitationem uxorum reclamantium. Sed probatur quod hic non habeat ecclesia aliquam auctoritatem hoc faciendi cum non possit dispensare contra nouum uel uetus.[41a] Dicitur enim in Leuitico: *Si peccaverit per errorem, offeret pro delicto arietem; ipsum quoque quod intulit damnum restituet et quintam partem ponet super altare erogans sacerdoti qui orauit pro eo.*[42] Item: *infra omnia que uoluerit quis per fraudes optinere restituat et quintam partem offerat sacerdoti.*[43] Item in euangelio dicit Zacheus: *Si quem defraudaui, reddo in quadruplum.*[44]

SOLUTIO. Dicimus ergo quod nichil ualet relaxatio predictis uel peregrinatio penitentium[45] nisi prius faciant in quantum possunt restitutionem et si non habent quid restituant spoliatis reconcilientur eis non per preces armatas sed deuotas supplicationes. Si autem aliqua habeant que secum deferant offerant ea spoliatis et tunc si sine omni (fol. 19^{va}) uiolentia et timore uoluerint aliqua dare eis, possunt recipere aliter non.

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[35] Cf. *Lev.* xii, 18-59.

[36] rapula B; cf. *Glossa Ord. in Lev. xiii*, PL 113, 335.

[37] Cf. *Lev.* xiii, 46-56.

[37a] Cf. J. Brys, *De Dispensatione*, pp. 126 ff.

[38] Cf. *Glossa Ord. in Lev. xiii*; PL 113, 335. Rhaban Maur, *Comm. in Lev.* 4, 5; PL 108, 389.

[39] de strenuitate milicie *om.* T.

[40] iumentum B.

[41] *Lev.* xiii, 52.

[41a] Cf. J. Brys, *De dispensatione*, pp. 126 ff.

[42] *Lev.* v, 16.

[43] *Lev.* vi, 5-6.

[44] *Luc.* xix, 8.

[45] penitentium *om.* T.

De uxore reclamante dicimus quod ipsa potest eum retinere uolentem perpetuo recedere ab ea, sed si ipse prefigat terminum[46] scilicet biennium uel triennium et se asserat infra illum[47] rediturum, debet ei dare licentiam precipue pro generali ecclesie utilitate sicut daret ei licentiam eundi ad sanctum Iacobum[48] uel Egidium.[49]

Obiectio. Sed dicet aliquis quia falce martyrii omnia resecantur et qui crucem assumit esse quasi martyrem quia reliquit omnia pro Christo et se martyrio exponit unde specialis debet ei fieri indulgentia de collectis et talliis suis et decimis quas ipse detinet.[50] Nam ipse militat pro ecclesia et ideo dominus papa potest ei concedere ad horam bona decimarum. Similiter princeps regni qui militat pro pace ecclesie potest talia licite possidere que ipse confiscat a subditis in defensione eorum.

SOLUTIO. Dicimus quod omnes decime sunt proprie episcopi et ecclesie,[51] licet de facto contineantur[52] contra iustitiam a militibus, tamen fructus earum potest dominus papa ad tempus concedere militi, sed ius decimarum non potest,[53] et absoluere potest illos de fructibus perceptis. Sed secus est de talliis et exactionibus quas iniuste faciunt in subditos quia de illis non potest eos absoluere sed potius debet ad restitutionem compellere; unde dominus in Leuitico precipit sacerdoti ut *de sanguine hostie ponat super extremum auricule dextre et super pollices manus et pedis dextre aspergat contra dominum septies*;[54] per auriculam auditum per manum dextram operationem per pedem dextram deuotum affectum accipe, ut ibi dicit auctoritas,[55] per aspersionem septies factam, perfectam remissionem intellige. Debet[56] ergo sacerdos in omnibus istis penitentem mundare et peccata per spiritum septiformem dimittere ut nichil in eum purgandum remaneat.[57] Unde precipit ibidem ei dominus ut radat omnes pilos capitis et supercilia et barbam et [pilos][58] totius corporis;[59] per pilos capitis cogitacionem mentis, per barbam uirilitatem quam sibi ascribit, per supercilia elationem,[60] per ceteros pilos pudendarum partium turpes affectus, per uestimenta opera intelligenda esse ibi dicit auctoritas.[61] Quasi (fol. 19^{vb}) diceret omnia ista purgare debet sacerdos in penitente. Sic ergo capellanus hec omnia debet explere[62] circa ipsum in foro penitentiali et si princeps in aliquo istorum inueniatur contradictorius scilicet quod noluerit restituere ad plenum, omnia debet ecclesie sacramenta ei interdicere et non more aliorum[63] in aliquo palpare.

[*k. Que penitentia iniungenda sit heretico.*]

Questio. Post hec queritur de illo qui extra ecclesiam diu acerbam peregit penitentiam, modo accedit ad te contritus rediens ad gremium[64] ecclesie uel conuictus est in iure de heresi et postmodum pro hiis contritus est quam penam iniunges tali? Si consimilem aliis cito *reuertetur ad uomitum*[65] et corrumpet gregem tibi commissum.[66] Si publicam penitentiam ei iniungis, iam detegis eius confessionem et ita non est correptor fratris sed proditor.

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[46] reuertendi *add.* T.

[47] spatium *add.* T.

[48] St. James of Compostella in Spain.

[49] The famous shrine and Abbey of St. Giles in Southern France; cf. *Acta SS. Sept.* I, pp. 285-291.

[50] possidet T.

[51] *Decretum*, C. 9, q. 1, c. 42-43.

[52] detineantur T.

[53] Cf. Alexander III, *Quamvis grave . . . prostratus* (1163); *Compilatio* II^a, II, 3, 17, 2; (c. 17, X, III, 30.)

[54] *Lev.* xiv, 14-16.

[55] *Glossa Ord. in Lev. xiv*; PL 113, 337.

[56] septies *add.* T.

[57] Cf. Rhaban Maur, *Comm. in Lev.* 4, 4; PL 108, 387.

[58] pilos *om.* B.

[59] Cf. *Lev.* xiv, 9.

[60] mentis *add.* T.

[61] Rhaban Maur, *Comm. in Lev.* 4, 6; PL 108, 393.

[62] expellere T.

[63] more aliorum *om.* T.

[64] matris *add.* T.

SOLUTIO. Si occultus est hereticus et confitetur tibi in secreto precide ab eo omnem occasionem reuertendi ad uomitum scilicet ne aliquo modo accedat ad contubernia hereticorum sed seorsum uiuat et peragat opera penitentie catezizatus et instructus in fide. Si uero sollemniter conuictus est de heresi uel publice confessus precipit dominus in Leuitico ut *uestimenta eius sint dissuta, caput eius nudatum, os eius ueste contectum et semper se clamet sordidum et immundum, solus habitet extra castra*[67] uel claustra. Vestimenta eius sint dissuta, id est secreta sint manifesta; caput eius nudum id est mens et intentio eius sint emundata;[68] os ueste contectum ne fetorem peccati loquendo diffundat nec docere presumat; clamet se sordidum peccatum confitendo.[69] Solus habitet extra claustra ut citius confundatur et ne in aliis crimen eius diffundatur; neophiti[70] enim usquequo in fide sint probati seorsum habitare iudicantur et postea si fideles inueniantur debent recipi in sinum ecclesie.[71] Si non, omnino ab ecclesia repellantur.

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[65] Cf. *Prov.* xxvi, 11.

[66] subditum T.

[67] *Lev.* xiii, 45-46.

[68] denudata T.

[69] Rhaban Maur, *Comm. in Lev.* 4, 4; PL 108, 387.

[70] tales *add.* T.

[71] Cf. *Decretum*, D. 48, c. 2.

Multum Ad...

ETIENNE GILSON

LE *Dictionnaire étymologique de la langue latine*, d'A. Ernout et A. Meillet, indique trois sens principaux de *multus, -a, -um:*[1] d'abord le sens classique de "beaucoup"; ensuite, un sens de "qui se multiplie, qui se prodigue", lequel se teinte parfois d'une nuance péjorative: *heu, hercle hominem multum et odiosum;*[2] enfin, quelquefois aussi, le sens de "excessif". Sur quoi le *Dictionnaire* ajoute: "mais il est impossible de décider lequel de ces deux sens: 'abondant' ou 'excessif': est le plus ancien."

On voit en tout cas assez facilement comment l'un quelconque de ces deux sens a pu conduire à la nuance péjorative qui vient d'être signalée. C'est particulièrement clair si l'on part d'"excessif". *Nolo in stellarum ratione multus vobis videri*[3] implique, pour *multus,* le sens de "prolixe". Etre *multus* serait ici parler trop longtemps, s'attarder. Il se peut que dans l'exemple emprunté à Plaute, *multum* ait le même sens, et c'est du moins ainsi que semble l'entendre A. Ernout dans sa traduction des *Ménechmes*, v. 316: "Dieu! l'ennuyeux bavard et l'assommant personnage!" où "l'ennuyeux bavard" correspond manifestement au *multum* du texte latin.[4] *Multus* peut en effet désigner ici un causeur intarissable. Peut-être pourrait-il également désigner un "facheux", un homme dont on n'arrive pas à se débarrasser. C'est du moins ce qu'un autre texte suggère.

Les dictionnaires ont en effet accoutumé de rapprocher, du vers des *Ménechmes*, une épigramme de Catulle, 112, où *multus* apparaît deux fois avec un sens malaisé à saisir, peut-être même avec deux sens différents. W. Freund et A. Forcellini citent cette épigramme sous la forme suivante:

> Multus homo es, Naso; nam tecum multus homo est qui
> descendit; Naso, multus es et pathicus.

La leçon "nam tecum", qu'adoptent ces auteurs, invite à traduire *multus* par "prostitué". C'est ce que font W. Freund[5] et A. Forcellini.[6] Ce Naso est évidemment un homme perdu de vices, à la disposition du premier venu.

Dans son édition de Catulle, G. Lafaye adopte une autre leçon:

> Multus homo es, Naso, neque tecum multus homost qui
> Descendit; Naso, multus es et pathicus.

Cet éditeur propose de ce nouveau texte la traduction suivante: "Tu te multiplies, Nason; mais les gens ne se multiplient pas pour descendre (au forum) avec toi; Nason, tu es un homme moulu, un giton".[7] Comment on peut tirer "moulu" — confondu ici, dans une intention obscène, avec un ancien participe du verbe *molere*- du deuxième *multus* de notre épigramme, nous laisserons à l'éditeur de Catulle le soin d'en persuader le lecteur.[8] Sans s'engager soi-même dans un débat où les philologues seuls sont compétents, on peut du moins observer que la traduction de G. Lafaye ne se justifie qu'à grand renfort d'hypothèses, ce qui est toujours mauvais signe. La leçon *neque tecum*, qu'il substitue au *nam tecum* de ses prédécesseurs, l'oblige à chercher pour *multus* un sens nouveau. Nason "descendait" (où ?) avec beaucoup d'hommes; désormais, il n'y en a plus beaucoup qui "descendent (au forum)" avec lui. *Multus* ne peut donc plus signifier, comme le voulait Forcellini, *qui multorum hominum libidini inservit* et c'est pourquoi G. Lafaye propose à la place, "tu te multiplies". Seulement, la deuxième fois, "tu te multiplies" ne convient plus pour traduire *multus es et pathicus*, d'où le trop ingénieux "moulu" qu'on nous propose. Il serait en tout cas plus simple d'admettre ici le sens péjoratif de *multus* attesté par Plaute et de traduire: "tu es assommant, Nason . . .", ce qui conviendrait pareillement pour le *multus* du vers suivant.

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[1] A. Ernout et A. Meillet, *Dictionnaire étymologique de la langue latine* (Paris, 1932), pp. 607-608.

[2] Plaute, *Ménechmes*, 316.

[3] Cicéron, *De Natura Deorum* II, 46, 119.

[4] "*Tu, hercle, hominem multum et odiosum* dans *Plaute, Les Ménechmes,* trad. A. Ernout (Paris, Les Belles Lettres, 1936), p. 33. Le même vers est cité et, semble-t-il, entendu au même sens, dans W. Freund, *Wörterbuch der lateinischen Sprache* III, (Leipzig, 1845) p. 339, sens *B*; de même A. Forcellini, *Totius Latinitatis Lexicon* IV (Prato, 1868), p. 194, 5.

[5] "*Multus homo,* der den Lüsten Vieler fröhnt: *Multus homo es . . .*' etc. W. Freund, *Wörterbuch*, p. 339, sens *B*.

[6] "Specialius *multus homo* est qui multorum hominum libidini inservit apud Catull. 112: *Multus homo es, Naso; . . .*" etc. A. Forcellini, *op. cit.*, IV, p. 194.

Qu'il soit ou non dans l'esprit de Catulle, ce sens est certainement dans celui de Plaute. Etre *multus*, c'est être vraiment "beaucoup" à supporter. Le hasard de recherches conduites, sans intentions philologiques, à travers l'immensité des textes de saint Augustin, nous a mis en présence d'un *multum*, péjoratif lui aussi, et dont le sens nous a d'abord laissé assez perplexe pour qu'il mérite peut-être d'être signalé à son tour. Il s'agit d'ailleurs d'un *multum ad*, construction dont aucun des dictionnaires que nous avons consultés ne donne d'exemple et dont le sens ne peut être par conséquent déterminé qu'à partir du contexte.

1° Commençons par l'exemple le plus instructif, parce qu'il permettrait, à lui seul, d'établir le sens de la formule: "*Multum enim ad te erat gustare suavitatem Dei; quia remota erat illa et nimis alta, tu autem nimis abjectus et in imo jacens.*"[9] La douceur divine était trop lointaine et trop sublime, pour qu'un homme gisant dans son abjection pût la goûter. *Ad* ne fait pas ici difficulté: il signifie "par rapport à" ou "en proportion de".[10] Goûter Dieu, pour un homme dans cet état d'abaissement, c'était "beaucoup", c'était trop; bref, c'était difficile. La construction *multum ad* semble donc bien signifier: difficile pour.

2° Voici maintenant un cas moins net, mais qui s'éclaire à la lumière du précédent: Multum est quod ait ipsum, *Ego sum* . . . Quis digne eloquatur quid sit, sum? . . . Forte multum erat et ad ipsum Moysen, sicut multum est ad nos, et multo magis ad nos, intelligere quid dictum sit, *Ego sum qui sum*; et, *Qui est, misit me ad vos*.[11] *Multum* est ici employé trois fois, la première au sens absolu: *multum est*; les deux autres au sens relatif: *multum ad ipsum Moysen*, *multum ad nos*. Ici encore, il s'agit d'une difficulté à surmonter. Qui saura dire comme il faut ce qui signifie *sum*, dans le nom divin *Ego sum*? Que Dieu s'attribue ce nom: *Ego sum*, voilà ce qui est *multum*. Ce l'est pour nous, et qui sait? ce l'était déjà peut-être pour Moyse. Le comprendre, c'était "beaucoup" pour Moyse et ce l'est encore bien plus pour nous. Bref, c'est "difficile".

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[7] *Catulle, Poésies*, ed. G. Lafaye (Paris, Les Belles Lettres, 1922), p. 95.

[8] *Catulle, éd. cit.*, p. 95, note 1. En sens contraire, A. Ernout et A. Meillet, *Dictionnaire étymologique*, p. 595.

[9] *Enarr. in Ps. 134*, 5; PL 37, 1741.

[10] A. Ernout et A. Meillet, *Dictionnaire étymologique*, p. 12, signalent comme un des sens de *ad* "en comparaison de, en proportion de'.

[11] *In Joan. Evang.* 38, 8, 8; PL 35, 1679.

3° Autre texte à propos du même problème: "Si intellexit, imo quia intellexit Moyses, cum ei diceretur, *Ego sum qui sum, Qui est, misit me*; multum hoc credidit esse ad homines, multum hoc vidit distare ab hominibus."[12] Le deuxième *multum* conserve ici son sens habituel de "beaucoup", mais le premier pose le même problème que dans les textes précédents. Une fois de plus, il s'agit d'une difficulté à vaincre. Un être qui a droit de se nommer *Sum*, est bien différent de ce que sont les êtres humains. C'est pourquoi, comprenant fort bien ce que Dieu le chargeait de dire au peuple d'Israel, Moyse *multum hoc credidit esse ad homines*, c'est-à-dire, il a cru que, pour des hommes, cela serait *multum*. En d'autres termes, il a cru que ce serait leur offrir "beaucoup" à comprendre, ou que ce qu'il leur dirait, serait pour eux "difficile".

Notons d'ailleurs, un peu plus loin dans le même texte, une intéressante variante de cette construction, où *plus* remplace *multum*: "Assumpta enim mente vidit nescio quid, quod plus ad illum erat". Traduisons: "dans un envol de l'esprit, il vit un je ne sais quoi, qui était trop pour lui". Entendons: qui était pour lui trop difficile à saisir.

Ces divers exemples sont empruntés à des sermons dont le texte reste sans doute fort près de la langue parlée. Si la formule *multum ad* semble si rare, c'est sans doute qu'elle se disait, mais ne s'écrivait pas.

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[12] *Sermo VII*, 7; PL 38, 66.

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